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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable R. Lawton McIntosh, Circuit Court Judge

CHARLES GREEN, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001204

APPENDIX

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INDEX

INDEX	i
TRANSCRIPT OF TRIAL HELD NOVEMBER 13, 2013	1
APPLICATION FOR POST-CONVICTION RELIEF	245
PRO SE AMENDMENT TO POST-CONVICTION RELIEF APPLICATION	252
SECOND PRO SE AMENDMENT TO POST-CONVICTION RELIEF APPLICATION	253
RETURN	255
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD JANUARY 29, 2018	262
APPLICANT'S EXHIBIT NO. 1 (STATEMENT OF ASHLEY THOMAS)	313
COURT'S EXHIBIT NO. 1 (NOTEBOOK SUMMARY LISTING, HANDWRITTEN COURT ORDER DATED 9-17-2012, AND MOTION FOR A SPEEDY TRIAL)	314
ORDER OF DISMISSAL	317
INDICTMENTS	332
APPLICANT'S MEMORANDUM OF LAW	338
RESPONDENT'S MEMORANDUM OF LAW	341
FINAL BRIEF OF APPELLANT	346
FINAL BRIEF OF RESPONDENT	357

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF BEAUFORT) CASE NO.: 2011-GS-07-00851-00853

THE STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
CHARLES GREEN, JR.,)
)
)
 DEFENDANT.)
)

NOVEMBER 18th, 2013
BEAUFORT COUNTY, SOUTH CAROLINA
BEFORE THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

APPEARANCES:

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ORIGINAL

INDEX

VOIR DIRE	3
SELECTION OF JURY PANEL	16
BATSON MOTION BY DEFENSE	21
JURY PANEL SEATED	25
CERTIFICATE OF REPORTER	28

EXHIBITS

NONE.

1 THE COURT: Does the State have three indictments?

2 ASST. SOL. SWANSON: That is correct.

3 THE COURT: Okay, jurors, we're going to get through
4 this quick as we can. Judge Mullen said she promised you
5 that the jury would be picked by lunch, so those that were
6 picked will be free for a while. My name is Ernest Kinard
7 and I've been Chief Judge down here three times over the
8 years. I get down here about once every other month to hold
9 Court to make sure everything is still running right. Had
10 to break into the Clerk of Court and that wasn't easy.
11 Anyway, jurors, the Solicitor has placed three indictments
12 up here. They allege the commission of three separate
13 crimes by Charles Green. Of course, I guess Judge Goldsmith
14 told you what an indictment is. It's just charging paper
15 that contains allegations and creates no inference of guilt
16 against anybody charged with the commission of a crime, it's
17 just how the process starts.

18 The first indictment alleges that Charles Green
19 committed the crime of attempted murder in that he tried to
20 murder Henry Clifton by means of shooting him, and so forth,
21 back in April of 2011.

22 Now, Mr. Green is presumed innocent of this charge and
23 the other two charges. The second indictment charges that
24 Mr. Green possessed a weapon while he committed the violent
25 crime; the violent crime being attempted murder. And the

1 third indictment alleges that he was not authorized to
2 possess a firearm because of various reasons that we will
3 discuss with you if you get on the jury.

4 Now, Mr. Green is present, I take it?

5 MS. CAMPBELL: He is, Your Honor.

6 THE COURT: If he would just stand.

7 MS. CAMPBELL: Thank you, Your Honor.

8 (Defendant, Mr. Green, stands in courtroom.)

9 THE COURT: If you will stand up, Mr. Green, if you
10 don't mind; just turn around.

11 All right. Jurors, anybody know Mr. Green, go to
12 school with him, live in the neighborhood with him, work
13 with him, kin to him, either directly or indirectly? All
14 right. He may have a seat.

15 MS. CAMPBELL: Thank you, Your Honor.

16 THE COURT: And while you're standing, he's represented
17 by an attorney who is going to tell you who she is.

18 MS. CAMPBELL: Should I go through my office as well at
19 this time?

20 THE COURT: That would be good.

21 MS. CAMPBELL: Thank you, Your Honor. Good afternoon,
22 my name is Trasi Campbell. I'm the Chief Public Defender
23 for Beaufort County, which is in the 14th Circuit. I have a
24 number of attorneys that work in my office, and I will tell
25 you who they are now. James Bell, Lauren Carroway, Arie

1 Baux, Jessica Saxon and Kim Jordan; they work in my office.
2 Is that everybody? Did I miss anybody? Oh, yes, and Helen
3 Roper Dovell. Bob Harris is an investigator for my office,
4 and Rick Chapman, who used to work at the Sheriff's
5 Department, he also investigates in my office. Thank you.

6 THE COURT: Jurors, do any of y'all have any connection
7 directly or indirectly with any of those individuals' names
8 or the public defender's office?

9 JUROR: Yes, Your Honor, Hunter Montgomery, juror 116.
10 I briefly worked as co-counsel with Helen Roper for a brief
11 time at a resort on Hilton Head. The resort was our joint
12 client.

13 THE COURT: Okay. After you've given this information,
14 if you can be fair and impartial, just have a seat.

15 JUROR: I can be.

16 JUROR: Yes, sir. Richard Deuel, juror 82. I've know
17 Jessica Saxon ever since she was a little girl. I worked
18 with her dad. I also know Rick Chapman. He was a Rotary
19 club member of mine and I consider him a friend. I don't
20 think it would affect my ability to be judge fairly.

21 THE COURT: Okay.

22 JUROR: Abby Riccobene, 256, and I know Jessica Saxon.
23 She boards her dog for daycare where I work, but I wouldn't
24 be impartial.

25 THE COURT: Okay.

1 COURT REPORTER: I'm sorry. Did you say, "I would not
2 be impartial"?

3 JUROR: Correct.

4 JUROR: Amanda Smith, 290. I know Rick Chapman. He
5 administered my concealed weapons test years ago. I would
6 not be impartial. I would not have a problem.

7 THE COURT: Do you have a problem serving?

8 JUROR: No, sir. Not at all.

9 THE COURT: All right. Now, jurors, this is a criminal
10 trial. The previous jury was also a criminal selection
11 process may have some of the same questions, but you have
12 different attorneys; do you understand? So if you stood for
13 Judge Goldsmith, you have to stand again for me.

14 Now, the questions I'm going to ask you, but before we
15 do that, I guess in fairness, we need the State to tell us
16 who is going to prosecute the case.

17 ASST. SOL. SWANSON: Thank you, Your Honor. My name is
18 Hunter Swanson. I'm one of the Assistant Solicitors here in
19 Beaufort County. Sitting with me for this case is Samantha
20 Crimson. She is also one of our Assistant Solicitors, and
21 Investigator Jeremiah Fraser with the Beaufort County
22 Sheriff's Office.

23 THE COURT: Anybody have any connection with any of
24 those individuals right there at that table?

25 JUROR: I'm Chelie Gillespie, number 111. I know

1 Jeremiah and his wife and kids. I would not be impartial.

2 THE COURT: You would not or you can be?

3 JUROR: I -- I can be fair.

4 THE COURT: You can be fair, okay, fine. All right.

5 Jurors, the following questions apply to you and immediate
6 family member. Immediate family member means up and down
7 and across. Parents, children, brothers, sisters; not
8 talking about third cousin twice removed, all right? You or
9 an immediate family member either currently, or in the past,
10 ever been employed by law enforcement at any level? That
11 would be anything from the FBI to Highway Patrolman; anybody
12 that can arrest anybody. I need for you to stand.

13 JUROR: Harvey Bethea, number 21. My dad who is
14 deceased now was retired from the South Carolina Highway
15 Patrol.

16 THE COURT: Okay.

17 JUROR: Abby Riccobenne, 256. My husband is employed
18 for Beaufort County as a Sheriff's Deputy.

19 THE COURT: Okay.

20 JUROR: Kyleen Thomas, number 313. My nephew is State
21 Trooper/Detective with the Arizona State Department.

22 THE COURT: All right.

23 JUROR: Rebecca Hill, 145. My son is employed with the
24 MSA at Fort Meade. He was a police officer.

25 THE COURT: Okay.

1 JUROR: Eileen McGinnis, 204. My dad, who is deceased
2 now, was a Chicago cop.

3 THE COURT: All right. Jurors, that question also
4 encompasses probation agents, wildlife officers.

5 (NO RESPONSE.)

6 THE COURT: All right, jurors, if you or an immediate
7 family member while not currently or in the past employed by
8 law enforcement, if you or an immediate family member is or
9 has been employed in a quasi officer-type relationship, such
10 as a security guard, a night watchman, or somebody who walks
11 through doors looking for shoplifters, I need for you to
12 please stand.

13 JUROR: Rebecca Hill, 145. My husband used to be a
14 night watchman.

15 THE COURT: Okay. Jurors, we asked individuals who are
16 going to prosecute the case for the State that are employed
17 by the 14th Circuit Solicitor's Office to stand. If you or
18 an immediate family member currently, or in the past, have
19 been employed by any Solicitor's Office, including the 14th
20 Circuit Solicitor's Office, if you have any connection with
21 any member of the 14th Circuit Solicitor's Office, or any
22 other Solicitor's Office, or if you currently, or in the
23 past, have been employed by any individual or entity that
24 prosecutes cases, such as a district attorney, JAG service.
25 Some county attorneys prosecute in city court and some city

1 attorneys prosecute in city court, would you please stand.

2 JUROR: Kathleen Shamblen, 276. I'm a defense liaison
3 in South Carolina, and periodically, I do have cases go to
4 Criminal Investigation Division of the Department of Revenue
5 for the State.

6 THE COURT: All right. Jurors, you heard the answers
7 to the individuals who are employed by public defenders
8 corporation for the 14th Circuit. If you or an immediate
9 family member currently, or in the past, have been employed
10 by any public defender corporation or any individual that
11 represents people accused of committing a crime, such as a
12 criminal defense attorney, or an attorney who occasionally
13 represents individuals accused of crimes, would you please
14 stand.

15 Let the record reflect, no one else is standing.

16 THE COURT: Now, jurors, the Attorney General's Office
17 also prosecutes cases. Jurors, I have a series of
18 questions, and if they refer to you, I need you to come up;
19 the attorneys will also come up. Attempted murder is
20 classified as a violent crime. If you or an immediate
21 family member, in your opinion, have been the victim of a
22 crime of violence as you understand the term. I don't have
23 to -- I mean, you might think if somebody kicks in your car
24 window and you're not there and takes your purse off the
25 seat or your cell phone, that's a violent crime. It's not,

1 but if you think it is, I need for you to come up; that's
2 one.

3 Two, if you have ever testified in a criminal trial,
4 could be anywhere, magistrate's court, DUI case, or
5 anything, I need for you to come up, and if you have ever
6 been seated on a jury where somebody was tried for having
7 committed a crime. It could be city court, district court,
8 or whatever, I need for you to come up one at a time.

9 BAILIFF: If I could have them come line up over here,
10 Your Honor.

11 (Jurors line up to answer question.)

12 BAILIFF: Mr. Neal, number 227.

13 JUROR: My wife, before she was my wife, was involved
14 in a violent crime here in South Carolina. She was raped
15 and her boyfriend was killed.

16 THE COURT: All right. Is that going to keep you from
17 being fair and impartial?

18 JUROR: No, sir.

19 THE COURT: Okay.

20 BAILIFF: Mr. Morris, number 220.

21 JUROR: Your Honor, I was kidnapped and molested when I
22 was a little child.

23 THE COURT: All right.

24 JUROR: About six years of age.

25 THE COURT: Can you be fair and impartial?

1 JUROR: Yes, sir, I do believe, yeah.

2 BAILIFF: Mr. Beaufain, number 21, Your Honor.

3 JUROR: I have served on a jury trial before; a murder
4 trial

5 THE COURT: How long ago?

6 JUROR: It's been about four -- four or five years ago.

7 THE COURT: This courtroom?

8 JUROR: This very courtroom.

9 THE COURT: Okay.

10 BAILIFF: Ms. Schwab, number 272, Your Honor.

11 JUROR: My husband was shot while trying to help
12 someone by a jealous ex-husband.

13 THE COURT: Can you be fair and impartial?

14 JUROR: Yes, sir.

15 THE COURT: Okay.

16 BAILIFF: Ms. Hill, number 145, Your Honor.

17 JUROR: I was the victim of an aggravated burglary
18 trying to help my father in Arkansas, he is 93. She was
19 arrested and put in jail overnight and then when she was
20 released on bail, we literally had to flee. She was
21 screaming and threatening and we were hiding.

22 THE COURT: How long ago was it?

23 JUROR: About three years ago. And then about 25 years
24 ago, my house was burglarized and some people across the
25 street actually shot into our house and no one was hurt.

1 THE COURT: Can you be fair and impartial?

2 JUROR: I don't know. I don't feel like I would be
3 towards a burglarer, but I would try.

4 BAILIFF: Ms. Dillinger, number 78, Your Honor.

5 JUROR: Hello, I've been in banking 30-some-years and
6 in that period of time I've been in three bank robberies.

7 THE COURT: Okay. Can you be fair and impartial?

8 JUROR: Yes, I can.

9 BAILIFF: Mr. Amoreno, number 7, Your Honor.

10 JUROR: My sister was kidnapped at gunpoint.

11 THE COURT: How long ago?

12 JUROR: Early '80s.

13 THE COURT: Can you be fair and impartial?

14 JUROR: I believe I can.

15 THE COURT: Okay.

16 BAILIFF: Ms. Aiken, number 4, Your Honor.

17 JUROR: I served on a jury trial before, a murder jury
18 trial, and I also have three half-brothers that are in jail
19 for murder, but this doesn't have nothing to do with it.

20 BAILIFF: Ms. Thomas, number 313, Your Honor.

21 JUROR: Criminal Court, I don't know, maybe 10 years
22 ago; robbery by knifepoint, found guilty. That's all.

23 THE COURT: Okay. That's it.

24 BAILIFF: Ms. Houston, number 154, Your Honor.

25 JUROR: I served in January of 1995 on a high-profile

1 murder charge case that was relocated from Atlanta, Georgia
2 to Columbia County in Georgia, Toko Roar trial, and was
3 sequestered for 10 days.

4 THE COURT: Okay. If you get on this one, you won't be
5 sequestered.

6 JUROR: Thank you.

7 (NO OTHER RESPONSES.)

8 THE COURT: Okay, jurors, I have a list of potential
9 witnesses. I just have the names and some identifying
10 information on some of them. I will read that when I come
11 to it, but if you know someone with the same or similar
12 name, or related to someone with the same or similar name,
13 if you would stand. The attorneys can tell us if the person
14 you know is the person who will be called as a witness.

15 Clifton Henry, Channon Preston, Dr. Saeed Rehman of
16 Beaufort Memorial Hospital.

17 BAILIFF: One standing, Your Honor.

18 JUROR: I work as a Hospitalist at Beaufort Memorial
19 Hospital. Linda J. Houston, 154. I come in contact with

20 him. THE COURT: Okay. Melanie Smith, Beaufort County
21 Communications 9-1-1.

22 JUROR: Chelie Gillespie, 111. I used to work with her
23 nine years ago.

24 THE COURT: Okay. Erin Mowery, Beaufort County
25 Communications. William Crumpton, Beaufort County Sheriff's

1 Office. Jeremiah Fraser, Fairfax. Adam Zsamar, Sheriff's
2 Office. Brian Chapman, Sheriff's Office.

3 JUROR: Robert Neal, juror 227. I know Brian.

4 THE COURT: Okay. Lasandra Young, Beaufort County
5 Clerk of Court. Kristy Taylor, Beaufort County Clerk of
6 Court.

7 (NO OTHER RESPONSES.)

8 THE COURT: A couple of other potential witnesses; I'm
9 making sure they're not the same. These are officers of the
10 Beaufort County Sheriff Department, C. Carter, Ashley
11 Thomas.

12 All right, jurors, if you get on the jury, you will
13 have to follow the instructions that I give you even though
14 you may have a different interpretation of how the law ought
15 to be. You can't do that. You need to tell us before you
16 get on the jury. That's just the proposition of the law,
17 you know, like the defendant is presumed innocent, and the
18 State has the burden of proof beyond a reasonable doubt, and
19 so forth and so forth. It's a good bit more, but the bottom
20 law is you've got to take the law as I will instruct you.
21 If you can't do that, you need to tell us before you get on
22 there. Is there anything in the nature of the charges that
23 would keep anybody from being fair and impartial? Charges
24 involving weapons that I read out and attempted murder.

25 (NO RESPONSE.)

1 THE COURT: Any of you jurors heard anything about this
2 case?

3 (NO RESPONSE.)

4 THE COURT: Any juror aware of any reason why you
5 couldn't be fair and impartial if you are selected to serve
6 on this jury?

7 (NO RESPONSE.)

8 THE COURT: Now, jurors, this trial will not be as long
9 as the previous trial, but we will probably go into
10 Wednesday. So now is the time to tell me, because I didn't
11 qualify you or anything. You know, if you're going to have
12 a root canal Wednesday morning, you need to tell us now, not
13 Tuesday, so we would have to bring everybody else on
14 Thursday.

15 (NO RESPONSE.)

16 THE COURT: Anything else from the State?

17 ASST. SOL. SWANSON: None, Your Honor.

18 THE COURT: From the defense?

19 MS. CAMPBELL: No, thank you.

20 THE COURT: Okay, jurors, I just call your name, stand
21 up, they either accept you or -- I hate to put it this way,
22 reject you, and then eventually we will get 12 and 2
23 alternates, and we will call those up, and everyone else can
24 be on their merry way. (Brief pause in the courtroom while
25 the Clerk gets the names from the computer-generated list.)

1 BAILIFF: The previous question, Your Honor, this
2 gentleman may need to respond to it.

3 THE COURT: Okay.

4 JUROR: I'm Matthew Yelder, juror number 347. As I
5 told the previous judge, I have an out of town friend at my
6 house and I'm supposed to take him to the airport in
7 Savannah at 8:30 Wednesday morning. I expect to be back in
8 town by 9:30. I can make other arrangements if I have to.

9 THE COURT: That's all right. It will work out. We
10 won't start until 28 minutes til ten.

11 MADAME CLERK: Judge, we're ready for the jurors.

12 THE COURT: Okay.

13 MADAME CLERK: Juror 290, Amanda Smith. What says the
14 State?

15 ASST. SOL. SWANSON: Please excuse this juror.

16 MADAME CLERK: Juror number 77, Gerald Deline. What
17 says the State?

18 ASST. SOL. SWANSON: Please present this juror.

19 MADAME CLERK: What says the defense?

20 MS. CAMPBELL: Please swear the juror.

21 MADAME CLERK: Juror number 215, Elizabeth Mitchell.
22 What says the State?

23 ASST. SOL. SWANSON: Please present this juror.

24 MADAME CLERK: What says the defense?

25 MS. CAMPBELL: Please swear the juror.

1 MADAME CLERK: Juror number 182, Glen Larsen. What
2 says the State?

3 ASST. SOL. SWANSON: Please excuse this juror.

4 MADAME CLERK: Juror number 140, Matthew Heldreth.
5 What says the State?

6 ASST. SOL. SWANSON: Please present this juror.

7 MADAME CLERK: What says the defense?

8 MS. CAMPBELL: Please swear the juror.

9 MADAME CLERK: Juror number 5, Wanda Aiken. What says
10 the State?

11 ASST. SOL. SWANSON: Please excuse this juror.

12 MADAME CLERK: Juror number 42, Sam Burnett. What says
13 the State?

14 ASST. SOL. SWANSON: Please present this juror.

15 MADAME CLERK: What says the defense?

16 MS. CAMPBELL: Please excuse Mr. Burnett from this
17 trial.

18 MADAME CLERK: Juror 249, Cara Forester-Py. What says
19 the State?

20 ASST. SOL. SWANSON: Please present this juror.

21 MADAME CLERK: What says the defense?

22 MS. CAMPBELL: Please swear the juror.

23 MADAME CLERK: Juror number 220, Christopher Morris.
24 What says the State?

25 ASST. SOL. SWANSON: Please present this juror.

1 MADAME CLERK: What says the defense?

2 MS. CAMPBELL: Please swear the juror.

3 MADAME CLERK: Juror number 248, Jill Puplava. What
4 says the State?

5 ASST. SOL. SWANSON: Please present this juror.

6 MADAME CLERK: What says the defense?

7 MS. CAMPBELL: Please swear the juror.

8 MADAME CLERK: Juror number 56, Aaron Carroll. What
9 says the State?

10 ASST. SOL. SWANSON: Please present this juror.

11 MADAME CLERK: What says the defense?

12 MS. CAMPBELL: Please swear the juror.

13 MADAME CLERK: Juror number 295, Tony Smith. What says
14 the State?

15 ASST. SOL. SWANSON: Please excuse this juror.

16 MADAME CLERK: Juror number 207, James McLelland. What
17 says the State?

18 ASST. SOL. SWANSON: Please present this juror.

19 MADAME CLERK: What says the defense?

20 MS. CAMPBELL: Please excuse the juror from this trial.

21 MADAME CLERK: Juror number 276, Kathleen Shamblen.

22 What says the State?

23 ASST. SOL. SWANSON: Please present this juror.

24 MADAME CLERK: What says the defense?

25 MS. CAMPBELL: Please excuse this juror from this

1 trial.

2 MADAME CLERK: Mary Lou Fletcher, 105. What says the
3 State?

4 ASST. SOL. SWANSON: Please present this juror.

5 MADAME CLERK: What says the defense?

6 MS. CAMPBELL: Please swear the juror.

7 MADAME CLERK: Juror number 136, David Haskin. What
8 says the State?

9 ASST. SOL. SWANSON: Please present this juror.

10 MADAME CLERK: What says the defense?

11 MS. CAMPBELL: Please swear the juror.

12 MADAME CLERK: Juror number 204, Eileen McGinnis. What
13 says the State?

14 ASST. SOL. SWANSON: Please present this juror.

15 MADAME CLERK: What says the defense?

16 MS. CAMPBELL: Please swear the juror.

17 MADAME CLERK: Juror number 267, Mercedes Schmidt.

18 What says the State?

19 ASST. SOL. SWANSON: Please present this juror.

20 MADAME CLERK: What says the defense?

21 MS. CAMPBELL: Please swear this juror.

22 MADAME CLERK: Juror number 197, Richard Manley. What
23 says the State?

24 ASST. SOL. SWANSON: Please excuse this juror.

25 MADAME CLERK: Juror number 261, Ronald Romagnolo.

1 What says the State?

2 ASST. SOL. SWANSON: I'm sorry, what number was it?

3 MADAME CLERK: This is juror 261.

4 ASST. SOL. SWANSON: Please present this juror.

5 MADAME CLERK: What says the defense?

6 MS. CAMPBELL: Please excuse the juror.

7 MADAME CLERK: Juror number 142, Kurt Hepfner. What
8 says the State?

9 ASST. SOL. SWANSON: Please present this juror.

10 MADAME CLERK: What says the defense?

11 MS. CAMPBELL: Please swear the juror.

12 MADAME CLERK: Now, we'll be selecting our first
13 alternate. Juror number 284, David Simpson. What says the
14 State?

15 ASST. SOL. SWANSON: Please present this juror.

16 MADAME CLERK: What says the defense?

17 MS. CAMPBELL: Please excuse the juror from the trial.

18 MADAME CLERK: Juror number 246, Nancy Promislow. What
19 says the State?

20 ASST. SOL. SWANSON: Please present this juror.

21 MADAME CLERK: What says the defense?

22 MS. CAMPBELL: Please swear the juror.

23 MADAME CLERK: Now, we'll be selecting our second
24 alternate, juror number 34, Pamela Britton. What says the
25 State?

1 ASST. SOL. SWANSON: Please present this juror.

2 MADAME CLERK: What says the defense?

3 MS. CAMPBELL: Please swear Ms. Britton.

4 THE COURT: Okay. Anybody need to discuss anything
5 about the trial?

6 MS. CAMPBELL: We would have a matter about the jury
7 selection, Your Honor.

8 THE COURT: All right. Come on up.

9 BATSON MOTION

10 (Sotto voice discussion at the bench between the Court,
11 the solicitor, and the defense attorney.)

12 MS. CAMPBELL: The State struck 182 a black female and
13 295 a black male. We would have a Batson motion on those
14 strikes.

15 THE COURT: You've got two of them you struck.

16 ASST. SOL. SWANSON: Right. One has a disability that
17 we don't know the nature of and then the other one had a
18 number of CDV arrests on his record.

19 MS. CAMPBELL: Okay. Well, I understand the State with
20 the CDV arrest, but the disability and not knowing the
21 nature of it, the State certainly could have gone into that
22 on voir dire. I don't think that that's necessarily ---

23 ASST. SOL. SWANSON: Well, actually, she didn't come up
24 front at all, so I wasn't just going to stand up and
25 question her.

1 THE COURT: She didn't have an opportunity to do it.

2 ASST. SOL. SWANSON: No.

3 THE COURT: Do you customarily strike people with
4 disabilities?

5 ASST. SOL. SWANSON: Well, if I don't know the nature
6 of it, it makes me nervous, yes. I mean, she could be
7 uncomfortable; I don't know.

8 THE COURT: Well, she didn't say she had any problems.

9 MS. CAMPBELL: She didn't.

10 THE COURT: Normally, they say they can't sit or
11 something, so we could have inquired. Which one was that?

12 MS. CAMPBELL: Juror 182, black female.

13 ASST. SOL. SWANSON: I think that's juror number 5,
14 actually.

15 MS. CAMPBELL: Is it?

16 ASST. SOL. SWANSON: Number 182 is a bartender, who I
17 struck.

18 THE COURT: Yeah, juror number 5.

19 MS. CAMPBELL: Yes, Ms. Aiken, number 5.

20 THE COURT: All right. So what do you want to do? The
21 simplest thing is to put her on.

22 ASST. SOL. SWANSON: Well, can we ask her what her
23 disability is?

24 THE COURT: We don't use this second alternate is all.
25 Otherwise, you've got to go through the whole process again.

1 It's lunchtime and they ---

2 ASST. SOL. SWANSON: Well, I understand, Your Honor. I
3 didn't strike her because she's a black female. I struck
4 her because I don't know the nature of her disability.

5 THE COURT: That's not a neutral strike, though. You
6 could have inquired about that. That's the information you
7 had since you already knew what it was.

8 ASST. SOL. SWANSON: If given the opportunity.

9 THE COURT: I can't help you with that. You know,
10 there is no black on the jury.

11 ASST. SOL. SWANSON: Okay. Well, now, I'm seating
12 someone that I've already struck and she doesn't know why.

13 THE COURT: Wait a minute; which one?

14 ASST. SOL. SWANSON: Five.

15 THE COURT: Well, doesn't matter. They don't remember
16 whether they've been called out or not. All right. This is
17 the best we can do. We can't seat her since she's heard
18 herself being struck. All we can do is call another one.
19 Well, that doesn't help her, does it? Well, it really does,
20 it gives you a black person on the jury, but ---

21 MS. CAMPBELL: I stand by my motion that the solicitor
22 has failed to state a racially neutral reason for striking
23 juror number 5.

24 THE COURT: Yeah. Yeah, sometimes you have to do
25 things because of the hour.

1 MS. CAMPBELL: I know.

2 THE COURT: The proper thing would be to set them all
3 and strike again, but we can't do that because Judge Mullen
4 promised them we would have them struck by lunch, which was
5 not fair to any of us. All right. We'll put number 5 back
6 on and then put 21; she becomes the first alternate and
7 number 24 is not an alternate.

8 THE COURT: If you upset this jury, we can draw again.

9 ASST. SOL. SWANSON: I hate to do that. I don't want
10 to waste anyone's time.

11 THE COURT: It's not worth it, because we'll be right
12 back again. If you had even one black on there, we might do
13 that, but you don't have any.

14 ASST. SOL. SWANSON: And that's just the nature of the
15 jury pool ---

16 THE COURT: No, it's not. You've got to have a reason
17 for striking other than she's got a disability.

18 ASST. SOL. SWANSON: I get it.

19 MS. CAMPBELL: Thank you, Your Honor.

20 THE COURT: All right. Who is going to call them up?
21 All right, whoever is going to do it. What we're going to
22 do is put her back on when we call them up.

23 ASST. SOL. SWANSON: Wanda Aiken?

24 THE COURT: Yeah.

25 ASST. SOL. SWANSON: Okay.

1 THE COURT: He becomes first alternate. Second
2 alternate, gone.

3 (Attorneys return to their seats and Madame Clerk gets
4 ready to call jury panel.)

5 MADAME CLERK: Judge, are you ready for me to call them
6 up?

7 THE COURT: We are ready.

8 MADAME CLERK: Juror number 77, Gerald Deline. Juror
9 number 215, Elizabeth Mitchell. Juror number 140, Matthew
10 Heldreth. Juror number 5, Wanda Aiken. Juror number 249,
11 Cara Forester-Py. Juror number 220, Christopher Morris.
12 Juror number 248, Jill Puplava. Juror number 56, Aaron
13 Carroll. Juror number 105, Mary Lou Fletcher. Juror
14 number 136, David Haskin. Juror number 204, Eileen
15 McGinnis. Juror number 267, Mercedes Schmidt. Then, our
16 first alternate will be juror 142, Kurt Hepfner. And the
17 second alternate will be juror 246, Nancy Promislow.

18 (Jurors come up to be seated in the jury box.)

19 THE COURT: Okay, jurors, when we checked over the
20 strikes, somebody who was stricken is on there now and
21 somebody who was chosen as an alternate is not on there.
22 That's lucky that you're not on there anymore if you're an
23 alternate. Okay, jurors, you may not have to come in again,
24 but we don't know that yet, so we need for you to call
25 tomorrow after 6:00 p.m. If we do another trial, it will be

1 a short trial because we have a good bit of things to do
2 that will require a trial and the first trial is going to
3 take all week. So if y'all can not clap and shout and
4 everything and leave quietly, now would be a good time.

5 (Jurors from jury pool exit the courtroom.)

6 THE COURT: All right. What we going to do with these
7 jurors? Put them up in a motel or let them go home? We've
8 got a good many things to go over to shorten the trial. We
9 think we may finish it tomorrow, but we're not promising,
10 though, right?

11 ASST. SOL. SWANSON: Maybe.

12 THE COURT: So we need y'all to come back in the
13 morning at 9:25. We will start at 9:30, but I need you back
14 there five minutes early so you can elect somebody a
15 foreperson. Don't get your hopes up, though, it's not going
16 to pay anymore than anybody else gets. You're going to have
17 to decide the case based on what transpires in the courtroom
18 and what evidence is presented and what I instruct you is
19 the law. So don't be going and doing any research on the
20 internet on what's attempted murder and so forth, and don't
21 be looking up old newspaper articles to see if you can find
22 out something about the case. Now, if y'all could just
23 quietly leave and all meet back in the morning at 9:25. Oh,
24 and the two alternates cannot be the foreperson; that's all.

25 (Jury panel leaves the courtroom.)

1 THE COURT: When do y'all want to argue your motions?

2 ASST. SOL. SWANSON: 2:00 p.m. would suit the State.

3 MS. CAMPBELL: That's fine.

4 THE COURT: I didn't hear what you said.

5 ASST. SOL. SWANSON: 2:00 p.m.

6 THE COURT: That just gives us 10 to 20 minutes to eat
7 lunch.

8 MS. CAMPBELL: 2:30 would be good, then.

9 THE COURT: I was thinking about y'all, not me. I
10 don't usually even eat lunch.

11 MS. CAMPBELL: In the broad sense, over here the
12 defendant, so 2:30 would be great.

13 THE COURT: Okay. That's fine.

14 ASST. SOL. SWANSON: Thank you, Your Honor.

15 MS. CAMPBELL: Thank you, Your Honor.

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

CERTIFICATE

I, WANDA H. ROWE, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the trial of the captioned case, in the Court of General Sessions for Beaufort County, South Carolina, on the 18th day of November 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 8, 2014


Wanda H. Rowe, C.R. CM

ORIGINAL

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2 STATE OF SOUTH CAROLINA)
3) Court of General Sessions
4) Case No. 2011-GS-07-851
5) 2011-GS-07-852, 2011-GS-07-853
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
_____)
STATE OF SOUTH CAROLINA)
vs.)
CHARLES GREEN, JR,)
Defendant.)
_____) DATE: November 18, 2013

11 B E F O R E:

12 The Honorable J. Ernest Kinard, Jr.

14 A P P E A R A N C E:

15 Hunter P. Swanson, Assistant Solicitor
16 For the State of South Carolina

17 Thomasine Trasi Campbell, Esq.
18 For the Defendant

19 Karen V. Andersen, RMR, CRR
20 Circuit Court Reporter
21
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23
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INDEX

EXAMINATION

Witness Name	Page
JEREMIAH FRASER (IN-CAMERA)	
Direct By Ms. Swanson.....	16
Cross By Ms. Campbell.....	21
Re-Direct By Ms. Swanson.....	22
Re-Cross By Ms. Campbell.....	27
JEREMIAH FRASER	
Direct By Ms. Swanson.....	132
Cross By Ms. Campbell.....	145
Re-Direct By Ms. Swanson.....	153
Re-Cross By Ms. Campbell.....	154
CLIFTON HENRY (IN-CAMERA)	
Direct By Ms. Swanson.....	33
Cross By Ms. Campbell.....	36
CLIFTON HENRY	
Direct By Ms. Swanson.....	108
Cross By Ms. Campbell.....	120
ERIN MOWERY	
Direct By Ms. Swanson.....	56

1	<u>INDEX (continued)</u>	
2	EXAMINATION	
3	Witness Name	Page
4		
5	DR. SAEED REHMAN	
6	Direct By Ms. Swanson.....	59
7	Cross By Ms. Campbell.....	65
8	Re-Direct By Ms. Swanson.....	69
9	BRIAN CHAPMAN	
10	Direct By Ms. Swanson.....	71
11	Cross By Ms. Campbell.....	81
12	Re-Direct By Ms. Swanson.....	84
13	ADAM ZSAMAR	
14	Direct By Ms. Swanson.....	85
15	Cross By Ms. Campbell.....	91
16	Re-Direct By Ms. Swanson.....	94
17	Re-Cross By Ms. Campbell.....	95
18		
19	WILLIAM CRUMPTON	
20	Direct By Ms. Swanson.....	96
21	Cross By Ms. Campbell.....	102
22		
23	LASANDRA YOUNG	
24	Direct By Ms. Swanson.....	154
25		

1	EXHIBITS			
2	Exhibit	Description	Identification	Evidence
3	State's Exhibits 1	Photographs	7	
4	State's Exhibits 2	Photographs	7	89
5	State's Exhibits 3	Photograph	7	89
6	State's Exhibits 4	Photograph	7	89
7	State's Exhibits 5	Photograph	7	90
8	State's Exhibits 6	Photograph	7	75
9	State's Exhibits 7	Photograph	7	75
10	State's Exhibits 8	Photograph	7	76
11	State's Exhibits 9	Photograph	7	76
12	State's Exhibits 10	Photograph	7	76
13	State's Exhibits 11	Photograph	7	78
14	State's Exhibits 12	Photograph	7	78
15	State's Exhibits 13	Photograph	7	116
16	State's Exhibits 14	Photograph	8	116
17	State's Exhibits 15	Photograph	8	116
18				
19				
20				
21				
22				
23				
24				
25				

1	EXHIBITS (continued)			
2	Exhibit	Description	Identification	Evidence
3	State's Exhibit 16	Photograph	8	62
4	State's Exhibits 17	Photograph	8	62
6	State's Exhibit 18	Photo Lineup	8	138
7	State's Exhibit 19	Evidence Envelope NO. 0174	8	79
9	State's Exhibit 20	Evidence Envelope No. 0610	8	80
10	State's Exhibit 21	CD of Interview of Mr. Green	8	
12	State's Exhibit 22	CD of Surveillance	8	101
13	State's Exhibit 23	CD of 911 call	8	57
15	State's Exhibit 24	Miranda Rights Form	8	
16	Court's Exhibit 1	Photo Lineup	30	
18	State's Exhibit 25	Certified Conviction	30	155
19	State's Exhibit 26	Aerial Photo of Food Lion area	30	140
21	State's Exhibit 27	Aerial Photo of Food Lion Shopping Center	30	141
22	State's Exhibit 28	Screen Shot	99	100
24	State's Exhibit 29	Screen Shot	99	100
25				

1	EXHIBITS (continued)			
2	Exhibit	Description	Identification	Evidence
3	Court's Exhibit 3	Jury Note Request for definition of ABHAN	220	
4	Court's Exhibit 4	Jury Note for definition of assault and battery second degree	220	
5	Court's Exhibit 5	Jury note asking if they can convict defendant of possession of a firearm	220	
6	Court's Exhibit 6	Jury note asking if he can be found guilty of possession of a weapon and/or possession of a firearm by person convicted of felony	220	
7	Court's Exhibit 7	Jury note asking if the defendant can be found guilty of possession of a weapon and/or possession of a firearm by person convicted of a felony,	220	
8	Court's Exhibit 8	Jury Note asking if Charles Green was arrested the day after shooting or two days after	220	
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
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1 (State's Exhibit 1, Photograph, was marked for
2 identification.)

3 (State's Exhibit 2, Photograph, was marked for
4 identification.)

5 (State's Exhibit 3, Photograph, was marked for
6 identification.)

7 (State's Exhibit 4, Photograph, was marked for
8 identification.)

9 (State's Exhibit 5, Photograph, was marked for
10 identification.)

11 (State's Exhibit 6, Photograph, was marked for
12 identification.)

13 (State's Exhibit 7, Photograph, was marked for
14 identification.)

15 (State's Exhibit 8, Photograph, was marked for
16 identification.)

17 (State's Exhibit 9, Photograph, was marked for
18 identification.)

19 (State's Exhibit 10, Photograph, was marked for
20 identification.)

21 (State's Exhibit 11, Photograph, was marked for
22 identification.)

23 (State's Exhibit 12, Photograph, was marked for
24 identification.)

25 (State's Exhibit 13, Photograph, was marked for

1 identification.)

2 (State's Exhibit 14, Photograph, was marked for
3 identification.)

4 (State's Exhibit 15, Photograph, was marked for
5 identification.)

6 (State's Exhibit 16, Photograph, was marked for
7 identification.)

8 (State's Exhibit 17, Photograph, was marked for
9 identification.)

10 (State's Exhibit 18, Photo Lineup, was marked for
11 identification.)

12 (State's Exhibit 19, Evidence Envelope No. 0174, was
13 marked for identification.)

14 (State's Exhibit 20, Evidence Envelope No. 0610, was
15 marked for identification.)

16 (State's Exhibit 21, CD of Interview of Mr. Green,
17 was marked for identification.)

18 (State's Exhibit 22, CD of Surveillance, was marked
19 for identification.)

20 (State's Exhibit 23, CD of 911 call, was marked for
21 identification.)

22 (State's Exhibit 24, Miranda Rights Form, was marked
23 for identification.)

24 MS. SWANSON: Thank you, Your Honor, may it please the
25 Court. There are a few things that we needed to handle pretrial

1 and a few things that do not require any testimony, if you would
2 like to handle this first.

3 THE COURT: All right.

4 MS. SWANSON: I believe the defense has a motion to
5 sequester all witnesses. And the State would just join in that
6 motion.

7 THE COURT: We will do all except chief investigating
8 officer and alleged victim, I guess.

9 MS. SWANSON: Yes, sir.

10 Speaking of my victim, he is en route from the Horry
11 County Detention Center. So I would at this time make a motion
12 in limine to refrain from any mention of his current arrest for
13 CSC first-degree. That is a pending case. I have been in
14 contact with the solicitor on that case. Don't know how far it
15 is going to get, but I did turn over all the information on that
16 case to Ms. Campbell, but under Rule 609, the State does not
17 believe it can be used for impeachment. The prejudicial value
18 would far outweigh the probative value and CSC is not a crime of
19 dishonesty.

20 THE COURT: What about it, Ms. Campbell?

21 MS. CAMPBELL: Well, Your Honor, I looked it up and I
22 would refer the Court to 608. And I'm pulling it up now, but on
23 my reading of Rule 608, it's fair game for me on
24 cross-examination under the provisions of that section. And I
25 would contend that I'm allowed to go into his prior criminal

1 record and his -- the allegations against him of rape in Myrtle
2 Beach.

3 On Rule 608B and C, any motive whatsoever and the
4 source of that motive is subject to cross-examination, and it
5 doesn't necessarily just have to relate to truthfulness or
6 untruthfulness under 608.

7 THE COURT: His prior record could come in, any
8 previous charges in Myrtle Beach, especially if it's -- alleged
9 rape, you say?

10 MS. SWANSON: Yes, sir.

11 THE COURT: Not going to let it in. Probably after he
12 got shot, it changed his whole personality. Anything prior to
13 this instance, you can bring in, including bad acts, as long as
14 you tell me about it in advance. The pending stuff down there,
15 after two years after the fact is not going to come in; can't.

16 MS. CAMPBELL: Okay. I understand, Your Honor.

17 THE COURT: Unless he somehow opens it up.

18 MS. CAMPBELL: Well, then that would lead into my next
19 issue with Mr. Henry. Is the State planning on changing his
20 garb, or will he be dressed in his Horry County Detention
21 uniform? I don't believe they can take him out of that.

22 MS. SWANSON: Judge, I did want to address that. And I
23 did want to ask the Court's permission to dress out.

24 THE COURT: You can take him out of that. I mean, I'd
25 let him come out of it if he's in it, the defendant.

1 MS. CAMPBELL: My argument to the Court, for the
2 record, Your Honor, would be that Mr. Henry doesn't get the same
3 considerations as a criminal defendant. Mr. Henry is in
4 custody. And for the State to present him to the jury as not
5 currently being in custody on pending charges is misleading.

6 THE COURT: Well, the only way they can present him as
7 being in custody is to put him there with you. They aren't
8 going to mention where are you now, I would think.

9 MS. CAMPBELL: Again, my objection is that -- for the
10 State to mislead the jury and dress Mr. Henry up in street
11 clothes.

12 THE COURT: If I was going to let you bring in the
13 other stuff, I wouldn't let him be reclothed. But I'm not going
14 to let you do that, so he can appear in street clothes.

15 MS. SWANSON: Thank you, Your Honor. We do have a
16 potential witness, Channon Preston, who we are still trying to
17 locate. I don't know if he's going to be testifying or not. If
18 he does testify, it is my understanding from the previous
19 solicitor on this case that he made a statement to her that the
20 defendant said he lost all of his money the night before or he
21 spent all of his money the previous night on cocaine.

22 The State would be seeking to enter that statement
23 under a res gestae theory, because that's -- it's the reason he
24 didn't have any money. He then tosses \$20 to each of the
25 witnesses in this case. It doesn't make a whole a lot of sense,

1 but this is the testimony.

2 And later we think that his girlfriend got upset
3 because he didn't have any money. And so he gets really upset,
4 and he goes and shoots my victim after he gets the money back.

5 So the State would be seeking to elicit that testimony.
6 I just wanted to get a ruling on that.

7 THE COURT: See, I don't know anything about the case.
8 All I know is that he attempted to shoot him with a shotgun,
9 according to the indictment. I don't know anything about it.

10 MS. SWANSON: Yes, sir.

11 THE COURT: I need a little information before I rule.
12 That's all.

13 MS. SWANSON: Yes, sir.

14 THE COURT: I need your theory of the case and why
15 that's important, if it is, and how it can come in.

16 MS. SWANSON: Right. And I didn't know if you wanted
17 to just wait and see if Mr. Preston is going to be a witness.

18 THE COURT: That would be the simplest thing.

19 MS. SWANSON: That would be fine. I mean, if we have
20 to proffer, it shouldn't take very long at all. The other issue
21 that we can do without testimony is a pretrial ruling on the
22 admissibility of Ashley Thomas's statement upon the arrest of
23 the defendant. Ms. Campbell and I have discussed this matter,
24 and Investigator Fraser, upon the arrest of the defendant, when
25 he finally comes out of Ashley Thomas's house on Murray Drive,

1 she begins screaming: They started it; they shot at him
2 first.

3 I would be seeking to elicit that statement of Ashley
4 Thomas from Investigator Fraser under the hearsay exception Rule
5 8032 as an excited utterance. I don't believe that Ms. Campbell
6 actually has an objection to this, but we wanted to put this on
7 the record.

8 THE COURT: Well, assuming it was contemporaneous
9 almost, that's one of the exceptions.

10 MS. CAMPBELL: And, Your Honor, I understand from what
11 the solicitor has indicated that Officer Fraser would be
12 indicating that Ms. Thomas, in an excited manner, said: They
13 started it; they shot at him first.

14 And we do not to object to those two sentences only
15 being elicited, you know, through that testimony and through the
16 State's case.

17 THE COURT: All right.

18 MS. CAMPBELL: Nothing else. Thank you.

19 MS. SWANSON: Thank you, Your Honor.

20 Next matter would be Jackson v. Denno. And the State
21 would call Investigator Fraser to the stand.

22 MS. CAMPBELL: Your Honor, if I may, before we begin,
23 I'm sorry, I had one matter that didn't involve testimony, and I
24 would like to bring that up at this time.

25 Your Honor, my client would like for me to make a

1 motion to dismiss the case at this time. I will hand up to Your
2 Honor a bond paperwork that was signed by Judge Stephanie
3 McDonald, September 17th, 2012. Within that paperwork, Judge
4 McDonald orders the State of South Carolina to dispose of and
5 try this case by a certain date in 2012. And the State failed
6 to do that. And we would take an interpretation of Judge
7 McDonald's order that by the State failing to bring Mr. Green to
8 trial under her order, that the State lost the opportunity to
9 bring him to trial. And that the charges against Mr. Green, per
10 that order, should be dismissed at this time for the State's
11 failure to meet that deadline set by the Circuit Court. Thank
12 you, Your Honor.

13 MS. SWANSON: Thank you, Your Honor. The remedy for
14 the State not calling the case would have been to release
15 Mr. Green from custody. He was released from custody. There's
16 nothing in the order that says, or to be dismissed if not tried.
17 I don't believe that would be a proper remedy anyway. We do
18 have a victim in this case to think of and in any event, the
19 State is trying it now. I don't know what prejudice, besides
20 just having this charge pending as a result of his own actions,
21 there was against Mr. Green, but --

22 THE COURT: All right. I'm not going to dismiss it. I
23 read Judge McDonald's order. She was not the Chief Judge in any
24 event. But it dealt with electronic monitoring and so forth.
25 And that's the only thing that carries on, as he can't have any

1 contact with the witnesses.

2 MS. CAMPBELL: May it please the Court. Your Honor,
3 may I mark that as an exhibit for the case? That would be
4 Defendant's 1.

5 (Defendant's Exhibit 1, Bond paperwork signed by
6 Judge Stephanie McDonald on September 17th, 2012, was marked for
7 identification.)

8 THE COURT: I know a couple in Lancaster I previously
9 heard and told them to try it in 90 days or I was going to set
10 bond, PR, for murder. They said they needed more time. I said,
11 okay, you got 30 more days or this gets dismissed. But her
12 order doesn't address anything like that.

13 MS. CAMPBELL: Thank you for hearing us on that, Your
14 Honor. And I would have nothing further.

15 MS. SWANSON: Thank you, Your Honor. We will move
16 forward with the Jackson v. Denno hearing and then the Neil v.
17 Biggers. State calls Investigator Fraser to the stand.

18 JEREMIAH FRASER,
19 having been duly sworn, testifies as follows: State your name
20 and spell it for the Court please.

21 THE WITNESS: Jeremiah Fraser, F-r-a-s-e-r.

22 DIRECT EXAMINATION

23 BY MS. SWANSON:

24 Q. Investigator Fraser, can you tell us what your role in
25 the case against Mr. Green is?

1 A. I'm the primary investigating officer.

2 Q. Okay. And did you have an occasion to interview
3 Mr. Charles Green?

4 A. I did.

5 Q. Was he in custody during his interview?

6 A. He was.

7 Q. I'm going to hand you what's been marked as State's
8 Exhibit 24, and ask for you to describe for the Court what this
9 document is.

10 A. This is a Beaufort County Sheriff's Office Statement of
11 Miranda Rights Form.

12 Q. And did you go over that form with him prior to your
13 interview?

14 A. I did.

15 Q. Can you go over exactly how you gave him his Miranda
16 rights?

17 A. I can. I read directly off the sheet starting with
18 Number 1. I advise him, you have the right to remain silent.
19 Anything you say can and will be used against you in a court of
20 law. You have the right to talk to an attorney for advice
21 before we ask any questions. And if you cannot afford an
22 attorney, one will be appointed for you before any questioning
23 if you wish. If you decide to answer questions now without an
24 attorney, you will still have the right to stop answering any
25 time. You also have the right to stop answering at any time.

1 until you talk to an attorney.

2 Then I ask him to read me what is called the waiver of
3 rights, so that I know that they can read. The waiver of rights
4 state: I have read this statement of my rights and I understand
5 what my rights are.

6 I cannot read and the statement has been read to me
7 sufficiently so that I understand what my rights are. And I'm
8 willing to make a statement and answer questions. I do not want
9 an attorney at this time. I understand and know what I am
10 doing. No promises or threats have been made to me and no
11 pressure or coercion of any kind has been used against me.

12 Q. Did he seem to have any trouble understanding those
13 rights?

14 A. No, ma'am.

15 Q. Was he able to read the ones that you asked him to
16 read?

17 A. He was.

18 Q. Was there anyone else present during this interview?

19 A. Investigator Chapman.

20 Q. Did you or anyone in your presence, Investigator
21 Chapman, threaten or coerce the defendant in any way?

22 A. No, ma'am.

23 Q. Did you offer or promise him anything --

24 A. No, ma'am.

25 Q. -- in exchange for his statement? Did he wish to speak

1 to an attorney before he spoke to you?

2 A. He did.

3 Q. When did he give you this statement?

4 A. After his arrest at Ms. Thomas's house, we transported
5 him to the investigations office, so it was
6 within a half hour.

7 Q. Was that the date of the incident or later?

8 A. It was the following day.

9 Q. Okay. And so the date of that would be April 7th,
10 2011?

11 A. That's correct.

12 Q. Did Mr. Green appear to be under the influence of drugs
13 or alcohol?

14 A. No, ma'am.

15 Q. Did he have any other mental or physical disability
16 that you think might have impaired his way of thinking?

17 A. No, ma'am.

18 Q. I think you may have already testified to this, but the
19 questioning took place where?

20 A. At the investigations office where it was recorded.

21 Q. And how long did you question him?

22 A. Lasted probably three, four minutes.

23 Q. Can you identify the person that you interviewed that
24 day?

25 A. I can; the defendant sitting at the defendant's

1 table.

2 Q. Next to Ms. Campbell?

3 A. Yes, ma'am.

4 Q. And what did he say?

5 A. He didn't say a whole lot. Pretty much amounted to, I
6 don't know what you are talking about.

7 Q. Okay. And I'm actually going to hand you what's been
8 marked as State's Exhibit 21. Is this a copy of the recorded
9 statement that we reviewed together?

10 A. It is.

11 Q. Okay. And how do you know that?

12 A. I initialed it and dated it.

13 MS. SWANSON: All right. At this time, the State would
14 like to play Exhibit 21.

15 THE COURT: I don't have to listen to it, do I? It's
16 just whether it is admissible or not.

17 MS. CAMPBELL: I will defer to the State if they wish
18 to.

19 THE COURT: Well, it comes in unless she makes some
20 argument as to why the statement was involuntary.

21 MS. SWANSON: Okay.

22 THE COURT: It's just like a written confession. They
23 hand them up. I don't read them. It's a motion hearing.

24 MS. SWANSON: I understand. State's Exhibit 21 is what
25 the State would be seeking to play for the jury should it come

1 in.

2 THE COURT: Well, you can do that, if it comes in,
3 which Ms. Campbell may have some objection.

4 MS. SWANSON: Yes, sir. Thank you. Those are all the
5 questions I have at this time.

6 CROSS-EXAMINATION

7 BY MS. CAMPBELL:

8 Q. Thank you, Your Honor. State's -- is it 24? Yes. May
9 I? Thank you.

10 A. Yes, ma'am.

11 Q. Officer Fraser, I may have misunderstood you. But did
12 you say that Mr. Green did request to talk to an attorney?

13 A. If I remember right, he didn't want to make a statement
14 in either event.

15 Q. So I guess my question to you is, when you gave him
16 this form to sign, and he told you he didn't want to make a
17 statement, did he also tell you he wanted to talk to an
18 attorney?

19 A. I would have to listen to the recording again for that
20 specifically. What I can tell you is, I don't recall if he -- I
21 think he did ask for an attorney, but he did not want to make a
22 statement.

23 Q. Okay. And so the fact that you gave him his Miranda,
24 he said, I don't want to make a statement, I would like to talk
25 to an attorney, did you then stop talking to him and asking him

1 questions, or did you push?

2 A. No, ma'am, I didn't push him.

3 Q. So then you stopped asking him questions when he asked
4 for an attorney?

5 A. I don't think I ever even got to a question.

6 Q. So, in essence, what we are talking about is that you
7 gave a Miranda, he said, I don't want to make a statement, I
8 want an attorney, and that's all that was done or said?

9 A. Essentially, yes, ma'am.

10 MS. CAMPBELL: Okay. That's all the questions I have
11 for this officer.

12 THE COURT: All right.

13 REDIRECT EXAMINATION

14 BY MS. SWANSON

15 Q. Investigator Fraser, are you sure -- and again, I mean,
16 we probably need to listen to the interview to refresh your
17 memory if you are not sure, but that he requested an attorney?

18 A. I don't think he did. I think he just did not want to
19 make a statement, or he didn't offer anything.

20 Q. Okay.

21 THE COURT: Then why did he take a statement?

22 MS. SWANSON: Well, Your Honor, the statement, if we
23 listened to it --

24 THE COURT: Why would you want to play it if he didn't
25 say anything?

1 MS. SWANSON: He says he doesn't know nothing about
2 nothing.

3 THE COURT: All right. He can testify to that. You
4 are not going to play the statement. Once he says he doesn't
5 want to make a statement, he keeps on. He's a good officer, but
6 he should have --

7 MS. SWANSON: He doesn't keep on. It's literally about
8 a two- or three-minute recording.

9 THE COURT: I know, but when he says he doesn't want to
10 make a statement, maybe he wants a lawyer, you need to stop it.
11 All it is is he just says, I didn't do it. That's what 99
12 percent of the people arrested say. You don't need to play him
13 saying that.

14 MS. SWANSON: Okay.

15 THE COURT: Now, if he testifies contrary to that, if
16 he testifies, you can then play it for impeachment purposes, but
17 not put it in the case in chief. It's not incriminating. Just
18 he didn't really give a statement. He said he didn't do
19 anything. I don't know nothing about nothing is what I
20 understand him to say.

21 MS. SWANSON: I guess we can move on to the Neil v.
22 Biggers hearing.

23 THE COURT: He's already sworn.

24 BY MS. SWANSON:

25 Q. Investigator Fraser, did you prepare a photo lineup for

1 the victim in this case, Clifton Henry, to review?

2 A. Yes, I did.

3 Q. How did you prepare that?

4 A. I made the request through our intelligence division to
5 have it created.

6 Q. Is that routine?

7 A. Yes.

8 Q. What was the date, time, and location of the photo
9 lineup?

10 A. I would have to look at it to be certain of it.

11 Q. I'm sorry. Let me hand you what's been marked as
12 State's Exhibit 1 and have you identify what I've handed you.

13 A. May I see my report? The back of it isn't
14 filled out.

15 Q. I'm sorry?

16 A. If you'll just grab my folder.

17 Q. Okay. I can do that too.

18 A. I showed him the photo array the same day of the
19 incident while the victim was still in the hospital.

20 Q. Okay. How long after the incident was it?

21 A. No more than an hour.

22 Q. Who was there when you presented the lineup to
23 Mr. Henry?

24 A. I believe Sergeant Chapman was with me as well.

25 Q. How many photos were in the lineup?

1 A. It was a six-photo array.

2 Q. And did you place the suspect into one of the six spots
3 or did Intel?

4 A. Intelligence did.

5 Q. And what spot was he placed in?

6 A. Number 2.

7 Q. And how did you present the lineup to Mr. Henry?

8 A. There is instructions that we go over prior to showing
9 the photo array. Would you like me to read them?

10 Q. Yes, please.

11 A. It says: You will be asked to look at a group of
12 photographs. The fact that the photographs are shown to you
13 should not influence your judgment. You should not conclude or
14 guess that the photographs contain the picture of the person who
15 committed the crime. You are not obligated to identify anyone.
16 It's just as important to free innocent persons from suspicion
17 as to identify guilty parties. Please do not discuss the case
18 with other witness, nor indicate in any way that you have
19 identified someone.

20 Once those are read and they understand it, we flip the
21 array over, and show the person the array, which is what I did
22 in this case.

23 Q. Okay. And are the other five people besides the
24 defendant similarly depicted in skin tone, facial hair?

25 A. Yes, they are.

1 Q. And are they clothed in a similar manner?

2 A. Yes, they are.

3 Q. What about the background of the photos?

4 A. They are all the same. They are all jail booking
5 photos.

6 Q. Okay. Did you do anything to suggest which slot the
7 defendant was in to the victim when you presented it to him?

8 A. No, ma'am.

9 Q. Did you show him any other pictures of the defendant
10 prior to presenting him with this lineup?

11 A. No, ma'am.

12 Q. And was he able to indicate who had shot him?

13 A. He was, Number 2.

14 Q. Number 2. And who was that?

15 A. That's the defendant.

16 Q. And how certain was he that the defendant shot him?

17 A. He said 100 percent.

18 Q. All right. How long did it take him to pick him out of
19 the lineup?

20 A. It was immediate.

21 MS. SWANSON: All right. At this time, for the purpose
22 of this hearing, the State would move Exhibit Number 1 into
23 evidence.

24 THE COURT: Court's exhibit, yeah.

25 MS. SWANSON: Yes, sir. I don't have any further

1 questions at this time.

2 MS. CAMPBELL: May it please the Court.

3 RECROSS-EXAMINATION

4 BY MS. CAMPBELL:

5 Q. Officer Fraser, it appears that State's Exhibit 1 looks
6 exactly like the copy that the State provided to me. And so I'm
7 concerned that what should be on the back of it is not on the
8 back of it. There's no case number. There's no officer
9 signatures. There's no date. There's no time. And there's
10 certainly not any indication that Mr. Henry himself was ever
11 given this statement. Is that normal for you to leave all of
12 that blank?

13 A. If somebody's shot and can't use their arms to sign,
14 things like that, that would be why, I would assume.

15 Q. Okay. So because he's shot, you don't fill in the
16 date, the time, your initials?

17 A. I apparently didn't, no, ma'am. But I did note it in
18 my report.

19 Q. And we are to take that he was able to use his pen and
20 make a circle around Number 2 and then scrawl what appears to be
21 a C and an H, but he wasn't given the opportunity to sign the
22 back of it; is that correct?

23 A. Yes, ma'am. I wouldn't say he wasn't given the
24 opportunity, but, yes, ma'am.

25 Q. So you asked him to sign it, but he couldn't sign it?

1 A. I don't recall that I did.

2 Q. And the other officers that were there and present when
3 you showed this to Mr. Henry were who?

4 A. Sergeant Chapman I believe was with me.

5 Q. Sergeant Chapman was the only other officer?

6 A. Yes, ma'am.

7 MS. CAMPBELL: That's all I have.

8 THE COURT: Is identification even at issue? I don't
9 know anything about the case.

10 MS. SWANSON: Your Honor, I mean, I believe it's always
11 an issue.

12 THE COURT: Did they know each other before?

13 MS. SWANSON: They knew each other vaguely.

14 THE COURT: Oh, okay.

15 MS. CAMPBELL: Your Honor, for the record --

16 THE COURT: I can't let it in until the defendant -- I
17 mean, the victim testifies as to what he says. We can't
18 conclude --

19 MS. CAMPBELL: I understand. And for the record, Your
20 Honor, again, I would object now, and as I would continue to
21 object, because of the fact that the actual procedure that is
22 necessary to be followed was failed to be followed by law
23 enforcement in this case. And there's no guarantees for this
24 Court about anything on the back of that form that's essential
25 in order for it to be introduced into evidence.

1 THE COURT: Well, I don't think so. As long as he's
2 identified it, time, place and so forth, and if the victim backs
3 him up on it, no problem.

4 MS. SWANSON: I agree. It was noted in Investigator
5 Fraser's report.

6 THE COURT: In his report. He didn't have to write it
7 on the back of that.

8 MS. SWANSON: Yes, sir. Okay. Thank you.

9 THE COURT: As long as the victim says he actually
10 circled it best he could, but he's got to testify to that before
11 it can come in.

12 MS. SWANSON: Yes, sir.

13 THE COURT: But you can step down. You can play that
14 tape --

15 MS. SWANSON: I can play it?

16 THE COURT: Yeah, I need to listen to it.

17 MS. SWANSON: Yes, sir.

18 THE COURT: See what it says.

19 MS. SWANSON: This is State's 21, the interview of
20 Charles Green.

21 (State's Exhibit 21, CD played.)

22 THE COURT: Well, obviously, that can't come in. In
23 the light most favorable to the defendant, he doesn't understand
24 what he's telling him, among other things. Anything else I can
25 help you out with?

1 MS. SWANSON: I don't think so. The State doesn't have
2 anything else.

3 MS. CAMPBELL: Your Honor, I think we covered
4 everything.

5 (Court's Exhibit 1, Photo Lineup, was marked for
6 identification.)

7 (State's Exhibit 25, Certified Conviction, was marked
8 for identification.)

9 (State's Exhibit 26, Aerial Photo of Food Lion area
10 including Shanklin Elementary, was marked for identification.)

11 (State's Exhibit 27, Aerial Photo of Food Lion
12 shopping center, was marked for identification.)

13 MS. SWANSON: The State would move to amend this
14 indictment prior to the jury being sworn.

15 THE COURT: Which code section are you going to do it
16 at? The section you are talking about just talks about unlawful
17 carrying of a pistol. Doesn't say anything about a shotgun.

18 MS. SWANSON: Your Honor, this is just for pretrial.
19 That should be 16-23-30 CDR Code 2364, possession of a firearm
20 by a person convicted of a violent crime as defined by --

21 THE COURT: All right. That section still says pistol.
22 I don't have a supplement.

23 MS. SWANSON: I'm sorry. 16-23-500 -- well, what I
24 have here printed out is 16-23-500: Unlawful possession of a
25 firearm by a person convicted of a violent offense; it's

1 unlawful for a person who has been convicted of a violent felony
2 as defined by Section 16-160. That is classified as a felony
3 offense to possess a firearm or ammunition within the state.

4 So the code section is correct. Maybe it's been
5 changed since 2011.

6 THE COURT: What is the code section?

7 MS. SWANSON: 16-23-500.

8 THE COURT: You keep giving me different code
9 sections.

10 MS. SWANSON: Well, it is the same on here. And I
11 thought you told me that was not --

12 THE COURT: I don't even have a 16-23-500 in the book
13 here.

14 MS. SWANSON: I'm going to get on Lexis, Your Honor.

15 THE COURT: All right. Okay. It's not in the book
16 here, but we found it on the Internet, 500.

17 MS. SWANSON: Yes, sir. That is the correct --

18 THE COURT: What was he convicted of?

19 MS. SWANSON: He was convicted of trafficking
20 cocaine.

21 THE COURT: And that's classified as a violent crime?

22 MS. SWANSON: Yes, sir. I apologize. I thought you
23 were telling me it was wrong.

24 THE COURT: It is wrong because the section is not
25 1623-20 in the first place. That's all. You need to amend it

1 to --

2 MS. SWANSON: 1623-500 is what's on the front. Oh,
3 okay.

4 THE COURT: You see what I'm saying?

5 MS. SWANSON: I understand. Move to amend the code
6 section within the body of the paragraph. It is correct on the
7 front of the indictment.

8 THE COURT: Since it is correct on the front, there's
9 no need, you know --

10 MS. SWANSON: Thank you. Apologize for that error,
11 Your Honor.

12 The State will be seeking to enter the certified
13 conviction of the trafficking cocaine as an element of the case
14 against Mr. Green through Ms. Lasandra Young. I have a
15 certified conviction of that from March 16th of 2007.

16 THE COURT: All right. Well, we need to do whatever.

17 MS. SWANSON: Okay. Thank you, Your Honor. If we can
18 continue with the Neil v. Biggers hearing.

19 THE COURT: All right.

20 MS. SWANSON: The State calls Clifton Henry to the
21 stand. Mr. Henry, if he can just stand up. We've got a brief
22 pretrial proffer of some testimony. If you can place your hand
23 on the Bible.

24 CLIFTON HENRY,

25 being first duly sworn, testifies as follows: sworn

1 THE CLERK: State your name and spell it for the court
2 please.

3 DIRECT EXAMINATION

4 BY MS. SWANSON:

5 Q. Good morning, Mr. Henry.

6 A. Good morning.

7 Q. Do you recall an incident that occurred on April 6th of
8 2011?

9 A. Yes, ma'am.

10 Q. And what was that, can you please tell us?

11 A. I was shot with a sawed-off shotgun.

12 Q. Who shot you?

13 A. We call him CJ, but it's Charles Green.

14 Q. And can you identify Mr. Green?

15 A. Yes.

16 Q. Okay. And where is he?

17 A. (Witness indicates).

18 Q. Are you pointing to the man at the defense table?

19 A. Yes, ma'am.

20 Q. Next to Ms. Campbell?

21 A. Yes, ma'am.

22 Q. And were you -- did you talk to Investigator Fraser
23 after this incident?

24 A. Yes, ma'am.

25 Q. And were you able to tell him who shot you?

1 A. Yes, ma'am.

2 Q. Were you able to clearly see the person that
3 shot you?

4 A. Yes, ma'am.

5 Q. Do you wear glasses?

6 A. I wear reading glasses.

7 Q. So just reading glasses?

8 A. Yes, ma'am.

9 Q. What time of day was it when Mr. Green shot you?

10 A. Like noon.

11 Q. So was it daylight or dark outside?

12 A. It was daylight.

13 Q. Did Mr. -- did Investigator Fraser present you with a
14 photo lineup?

15 A. Yes, ma'am.

16 Q. And were you able to pick someone out of that photo
17 lineup?

18 A. Yes, ma'am.

19 Q. And how certain were you that that was the person that
20 shot you?

21 A. I was certain.

22 Q. Okay. I'm going to show you what's been entered as
23 Court's Exhibit 1 and ask you if this is the photo lineup that
24 Investigator Fraser presented to you?

25 A. Yes, ma'am.

1 Q. And who circled the person in position Number 2?

2 A. I did.

3 Q. And whose initials are those?

4 A. That's mine.

5 Q. Those are your initials?

6 A. Yes, 'ma'am.

7 MS. SWANSON: Okay. State has nothing further at this
8 time.

9 CROSS-EXAMINATION

10 BY MS. CAMPBELL:

11 Q. Mr. Henry, how long have you known CJ?

12 A. I would say not quite a year, not quite a year.

13 Q. Not quite a year from when?

14 A. From the time that I move over to Murray Drive.

15 Q. When did you move there to Murray Drive?

16 A. I'm not sure of the date, but I think I was there
17 probably seven or eight months.

18 Q. And how did you know CJ?

19 A. I met him outside. One day when I was outside, he was
20 outside.

21 Q. And this was how long before the April 2011 incident?

22 A. We moved off of Murray Drive on Laurel Bay Road.

23 Q. So how long before April 2011 did you meet up with CJ
24 outside the trailer park?

25 A. Well, I saw him out there one day, and me and him just

1 started talking.

2 Q. So only one time?

3 A. After that we were talking. You know what I mean?

4 Q. Did you hang out? Did you play cards?

5 A. No. We talked sometimes on a regular basis. I be
6 outside, he be outside.

7 Q. You never played cards with CJ?

8 A. No.

9 MS. CAMPBELL: Your Honor, I would like to get -- well,
10 this would be in relation to my 608 argument. I'm going into
11 his incarceration on the rape charge in Horry County. I would
12 like to ask him a couple of questions on that for the record. I
13 believe he may have a motive or a bias for his testimony here
14 today and think it may somehow impact the Horry County case
15 that's pending against him and I would like to question him
16 about that.

17 MS. SWANSON: Your Honor, I would object to any line
18 of questioning on that subject. Your Honor has already ruled
19 and Mr. Henry and I have not discussed anything about his
20 pending charge. He has been cooperative from the beginning of
21 this case. I don't think it has any impact on why he's here
22 today.

23 MS. CAMPBELL: And again, Your Honor, under 608, and
24 I'm not sending a message, I'm reading it from my handheld
25 computer, bias, prejudice or any motive to misrepresent may be

1 shown to impeach the witness either by examination of the
2 witness or evidence otherwise deduce and my point is this,
3 Mr. Henry may have a bias of prejudice or another motive for his
4 testimony here today and his cooperation with the State in
5 thinking that it may impact his rape charge in Horry County and
6 I think on behalf of Mr. Green, I should be allowed to go into
7 that with him and that's for the record.

8 THE COURT: Well, you can do it, but -- I will listen,
9 but be short with it.

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Because it's not coming in, you know. Go
12 ahead.

13 BY MS. CAMPBELL:

14 Q. Mr. Henry, you are currently incarcerated in Horry
15 County on a charge of rape, right?

16 A. Yes.

17 Q. And have you talked to investigators in Horry County
18 about coming here today?

19 A. No.

20 Q. Have you talked to anybody from Beaufort County about
21 your testimony here today?

22 A. No.

23 Q. Ever?

24 A. In Beaufort County?

25 Q. Yes. I talked to Mr. --

1 Q. Fraser?

2 A. Yes.

3 Q. You've talked to Investigator Fraser?

4 A. Mr. Fraser and Ms. Carol, and I talked to her too.

5 Q. Ms. Swanson? When did you talk to Ms. Swanson?

6 A. I talked to Ms. Swanson yesterday.

7 Q. Yesterday. And that was at the Beaufort County
8 Detention Center?

9 A. Yes.

10 Q. And did you talk about your testimony today?

11 A. Yes.

12 Q. Okay. Do you have any hopes of your charges in Horry
13 County getting dismissed against you?

14 A. Yes.

15 Q. In your hopes for the charges being dismissed against
16 you, do you feel like if you were to give good testimony here,
17 that might help you?

18 A. I'm not sure. I mean, I don't really know, because I
19 have not been convicted of it yet, and I'm looking for it to be
20 dismissed.

21 Q. Right. Do you think it's possible that if you give
22 good testimony here, that it might help you in Horry County?

23 A. I'm going to give the truth today.

24 Q. That's not what I asked you. Is it possible --

25 THE COURT: Well, you know, you can't put words in his

1 mouth. Let's move it on.

2 MS. CAMPBELL: All right. Thank you, Your Honor.

3 That's all I have.

4 MS. SWANSON: Thank you, Mr. Henry. We will call you
5 up for your testimony in front of the jury once you are dressed
6 out. Okay? Thanks.

7 Your Honor, at this time the State would --

8 THE COURT: Hold it. Go ahead. There's no evidence
9 that he's been promised anything. That's how you could go into
10 it. So --

11 MS. CAMPBELL: And I don't believe that the State
12 promised him anything, but I believe that in his mind, he
13 could --

14 THE COURT: He said he didn't know.

15 MS. CAMPBELL: He doesn't know.

16 THE COURT: He doesn't know. So then how is he going
17 to be biased if he doesn't know? So forget it. Plus, the
18 prejudice of that outweighs anything. And tough luck.

19 MS. SWANSON: Thank you, Your Honor. Your Honor, at
20 this time the State has shown that the photo lineup is reliable
21 and not suggestive in any way. The State would like to offer to
22 move it into evidence once we lay the proper foundation.

23 THE COURT: It will come in.

24 MS. SWANSON: Thank you, Your Honor.

25 THE COURT: Everybody ready?

1 Juror Number 77 has been elected as foreperson.

2 (Whereupon, the jury returns to open court at 09:46
3 a.m.)

4 (Whereupon, the jury is sworn.)

5 THE COURT: Okay. Jurors, we are going to get right
6 into the trial. I appreciate y'all getting here on time. We've
7 already been in here knocking out a few things to speed it up.

8 I've been a judge 26 years, you know. Tried cases,
9 talked to witnesses who take two minutes; put them on the stand,
10 they want to tell you their life story. You know, sometimes
11 two-minute witness takes 40 minutes. And sometimes you get an
12 officer to testify and he's on his way here and there's a call
13 for him to go to a wreck scene and you have to wait. You know,
14 it's just -- but things are running smoothly. And we are moving
15 it right along.

16 Now, any time you are accused of committing a crime,
17 it's a serious situation. I think y'all understand that. And
18 as I mentioned yesterday, these three documents are charging
19 papers, allegations, create no inference of guilt against the
20 defendant. And the fact that he's called a defendant, that's
21 just legal designation of an individual accused of committing a
22 crime.

23 Charles Green is charged with three indictments. He's
24 presumed innocent of all charges. There's absolutely no burden
25 on his part to prove he's not guilty in order to obtain a

1 conviction on any of the three indictments. It's incumbent on
2 the State to convince 12 jurors unanimously, beyond a reasonable
3 doubt that he committed the crime embraced within the
4 indictments that I'm going to run over with you. Again, the
5 indictments are just allegations.

6 First indictment alleges that back on April the 6th of
7 2011, Charles Green did attempt to kill and murder Henry Clifton
8 by means of shooting him with a shotgun, in violation of a
9 certain code section.

10 Jurors, murder is unlawful killing of one human being
11 by another with malice aforethought, expressed or inferred.
12 Malice is, of course, ill will, hatred, bad feelings, so forth.
13 I will explain that to you in a little more detail at the end of
14 the trial, but that's basically it.

15 Now, he's not charged with murder. He's charged with
16 attempted murder, which means if the victim had died, he would
17 have been charged with murder. And, you know, I've got things I
18 could read to you about attempt, but, you know, attempt is
19 trying to do something. If he had been successful in carrying
20 it out and the State proved the elements that constitute the
21 crime of murder, he would be guilty of murder. Saying that, I'm
22 not suggesting he's guilty of attempted murder. I don't know
23 anything about the facts of the case. You know? Y'all know as
24 much as I do just about, although I have heard a few motions,
25 but that's just preliminary kinds of things.

1 And murder is an intentional crime. Homicide covers
2 many things. If somebody dies, any time a person dies through
3 the action of another person, you are talking about homicide,
4 but murder is an intentional killing of one human being by
5 another with malice aforethought, expressed or inferred.

6 Expressed is pretty simple, you know. If I said, I
7 hate you, go back in the office and get a gun, come back and
8 shoot you, and I do that, well, you know, it's pretty clear.
9 But malice can be proved by circumstantial evidence as well.
10 It's not two different kinds of malice. It's just the manner in
11 which it's proven.

12 To obtain a conviction of attempted murder, the State
13 has to convince 12 jurors unanimously beyond a reasonable doubt
14 that Mr. Green did attempt to kill Mr. Griffin with malice
15 aforethought, expressed or inferred.

16 All right. The second indictment is an add-on penalty
17 situation. All right. This is one that you could not find
18 Mr. Green guilty of unless you first found him guilty of
19 attempted murder. Attempted murder is classified as a crime of
20 violence. And this particular charge says that Charles Green
21 did have a shotgun and exhibited a shotgun and attempted murder
22 and so forth, and that constitutes a violent crime.

23 So bottom line, if you commit a violent crime or a
24 crime classified by the legislature to be a crime of violence,
25 if you are armed with a weapon -- and shotgun complies with

1 that, without getting into the definition of how long it has to
2 be to be a shotgun and so forth. That may become an issue. I
3 don't know. I wouldn't think so, but it could. But if a person
4 possesses a weapon during the commission or attempted commission
5 of a violent crime, the State has to convince you beyond a
6 reasonable doubt first that they attempted a violent crime, then
7 they were armed with a weapon. It's an add-on penalty.

8 If you found him not guilty of attempted murder, you
9 would not need to consider that. You first have to be convicted
10 of a commission of a violent crime before you can add on the
11 penalty.

12 The third indictment is an independent indictment. And
13 it alleges that Mr. Green did unlawfully have in his possession
14 on the same day a firearm, specifically a shotgun, and that
15 pursuant to Code Section 1623-500, he was not authorized to
16 carry the shotgun because he previously had been convicted of a
17 felony that was classified as a violent crime. That's an
18 independent situation. You have to have -- the State has to
19 prove that he's been previously convicted of a felony, that it
20 was classified as a violent crime, and that he had in his
21 possession on that date a shotgun. Must prove all those
22 elements beyond a reasonable doubt.

23 Now, you jurors are going to pass upon the credibility
24 of all of the witnesses that testify. You are going to evaluate
25 all the testimony. Give it such weight as you feel it is

1 entitled to. A couple of other things introduced that are not
2 testimony, anything that comes in, you can consider. You can
3 set the weight that you feel it's entitled to.

4 Takes a unanimous decision of 12 jurors to reach a
5 verdict. All jurors need to pay attention. Having done this 26
6 years or so, I think everything is going smooth, then there's
7 some child who's fallen at school or something and somebody has
8 to go. So then the alternates come into play and have to take
9 over. You have to pay attention all the way through because you
10 can't tell when an emergency might happen, even if I instruct
11 you at the end of the trial or something like that.

12 So, Foreman, you act as spokesperson for the jury, but
13 your vote doesn't count more than anybody else. You have to
14 preside over deliberations and you alone will sign the verdict
15 forms that will come back on the three charges which I will
16 explain to you at the end since I'm not sure how you worded it
17 at this point.

18 Now, this is how the trial progresses. Remember, the
19 defendant does not have to prove anything. Doesn't have to
20 prove not guilty. Doesn't have to testify, put up any evidence.
21 May or may not. I don't know.

22 To start, the attorneys are going to make opening
23 statements to you. Those will not be evidence. They are going
24 to outline what they think will be presented, may suggest
25 conclusions you should draw from it. But anyway, pay attention,

1 but that's not evidence. Evidence is sworn testimony and
2 admitted exhibits.

3 So after that, we will start calling witnesses. We
4 break roughly every hour 20 minutes. Somebody needs to break
5 early, just raise your hand. But, unfortunately, we can't have
6 individual breaks. You know, just like Three Musketeers, all
7 for one, one for all. Anybody needs a break, everybody has to
8 take a
9 break. So during any breaks, don't talk about the case. Don't
10 discuss it at all until everything is in and I've instructed you
11 on the law and the attorneys have summed up for you.

12 I think we will make opening statements and probably
13 call a witness before the break. Depends how long they will go,
14 because I didn't ask them how long they were going to take.

15 You may proceed.

16 MS. SWANSON: Thank you, Your Honor. May it please the
17 Court.

18 I'm going to take you back to a Wednesday afternoon on
19 April 6th of 2011. It was a public place, the Food Lion
20 shopping center in Burton, off of Shanklin road. It was a
21 public place and it was Charles Green with a sawed-off shotgun.
22 Shots were fired in front of a bustling grocery store, and in
23 front of a shopping center that housed a daycare and a Chinese
24 restaurant.

25 Charles Green opened fire on Clifton Henry, hitting him

1 in the left arm, in the left leg. Why did he do this? We don't
2 really know. Frequently these kinds of crimes are senseless.
3 And the State doesn't have to prove motive in this case. So
4 please bear that in mind.

5 Clifton Henry was pretty surprised to get hit by a
6 shotgun blast too when he was standing in front of the Food Lion
7 in front of a string of propane tanks. He actually thought that
8 he and Charles Green, who he knew as CJ, were actually pretty
9 friendly.

10 Now, you are also going to hear that Clifton Henry, the
11 victim in this case, is a man with a past. All right? He is
12 not the most upright citizen of South Carolina or Beaufort
13 County. Don't let that cloud your judgment or the application
14 of the law in this case. You are still to apply the law as
15 Judge Kinard charges you at the end of the case. The laws of
16 this State do not pick and choose which victims it protects.
17 All right?

18 We are going to tell you about Mr. Henry's run-ins with
19 the law, things that he regrets. But bear in mind that this is
20 not Clifton Henry vs. Charles Green. This is the State of South
21 Carolina vs. Charles Green. And the State of South Carolina has
22 a vested interest in making sure that it's not the wild, wild
23 west here in Beaufort. You can't just take your disagreements
24 or your fits of rage to the street with a shotgun.

25 Today as jurors you sit in judgment. You sit in

1 judgment of the facts of this case. You get to determine who
2 you believe on the witness stand, who you find credible, what
3 you believe really happened. The word verdict comes from the
4 Latin word verdictive. And it means to speak the truth. At the
5 end of this case, I will ask you all to do that, to speak the
6 truth, to render a verdict that speaks the truth.

7 How do you determine the truth? You determine the
8 truth by your collective intelligence, your common sense, and
9 your inherent ability to know right from wrong. You get to look
10 and observe everyone testify on this witness stand. Are they
11 telling the truth? That's for you to decide. Do they have a
12 reason to lie? Do they have any bias?

13 My job here is to present a clear and convincing case
14 to you, to prove to you that Charles Green is guilty of these
15 three indictments beyond a reasonable doubt.

16 Now, Judge Kinard is going to tell you what beyond a
17 reasonable doubt means. And it basically means beyond -- it
18 doesn't mean beyond any doubt, but it means beyond a doubt that
19 would cause a reasonable person to hesitate to act.

20 This case will be short. It will progress pretty
21 quickly. It's a good old-fashioned case based almost solely on
22 witness testimony. The evidence that you are going to hear
23 comes from the witness stand. There's not going to be a lot of
24 physical evidence. This is not a case that lends itself to a
25 lot of CSI work, scientific evidence, things of that nature. So

1 it is not overly complicated. It will be short and sweet, but
2 that doesn't make it any less important.

3 Before I turn it over to Ms. Campbell, I do want to
4 thank you all for your juror service. I've worked for the
5 Solicitor for about seven years, and one of my primary
6 responsibilities in the past has been to run court. So I've
7 seen first hand when things breakdown when we don't have
8 enough --

9 MS. CAMPBELL: Objection, Your Honor. This is not
10 relevant to this case.

11 THE COURT: It is not. So go ahead.

12 MS. CAMPBELL: At all.

13 MS. SWANSON: I understand that you guys will give it a
14 lot of thought. And I trust that you as jurors, as I've seen
15 you do in the past, will render a verdict that seeks justice.
16 Thank you.

17 MS. CAMPBELL: May it please the Court.

18 THE COURT: Sure.

19 MS. CAMPBELL: Thank you. Good morning. I will tell
20 you that when the solicitor says, don't let Clifton Henry's past
21 cloud your judgment, that's just simply a misstatement. His
22 past is who he is. And it is your job to judge his credibility.
23 His Honor will tell you when he charges you on the law, that is
24 your most important function, is to listen to the witnesses, to
25 take their testimony, compare it to the two prior statements

1 Mr. Henry has given. See the different versions of what
2 happened on April 6th, 2011, and decide for yourselves whether
3 or not you can believe Clifton Henry as he sits up here pointing
4 the finger at Charles Green and accusing him.

5 It's not about clouding your judgment. It's about
6 using your judgment. And His Honor will tell you that. I will
7 tell you that I believe you will hear testimony that on April
8 6th, 2011, that Clifton Henry, who is an armed robber, who is a
9 thief, who is an assaulting person, someone who beats people up,
10 he's known to carry a gun in the neighborhood and the community.
11 The investigators went out there to the trailer park where he
12 was living and talked to the people he was living with. Does he
13 keep a gun? Yes, he keeps a gun. Is the gun here? No. He was
14 armed that day. And he stole money from Charles Green. He
15 stole this man's money.

16 Now, Mr. Henry is going to tell you one of his
17 statements, I think. I don't know which one he will rely on
18 when he gets on the witness stand, but he may tell you that
19 Charles Green just came up to the poker table where they were
20 playing cards outside the trailer park and he just threw his
21 money down on the table and said, here, y'all, take it. Now,
22 the believability of that statement is ludicrous. Again, I
23 don't know what he will say. We will all have to wait and find
24 out when they bring him in.

25 Now, later in the day, you may hear testimony that

1 Clifton Henry ran into Charles Green at the Food Lion after he
2 had robbed him and taken his money. Now, one of Clifton Henry's
3 first statements is that, oh, I walked over to the car to give
4 him his money back, and when I did that, he shot at me. Then
5 Clifton Henry makes a second statement upon further
6 interrogation by the law enforcement officers and he says, well,
7 actually, I was hiding behind a pillar at the Food Lion when he
8 shot at me. Again, believability, reliability, are the bedrock
9 foundations of what we have to do here today.

10 Now, the Solicitor, I think, said that she had to
11 present a clear and convincing case. That's just not the rules.
12 The State has to present evidence to convince each one of you
13 individually in your own mind, not collectively. I mean, you
14 have to reach a unanimous verdict, but you each sit in a
15 separate chair. You each have your own mind. And there's
16 nothing that can overtake your position. No one person can
17 overtake your view of this case.

18 The State has to prove to each individual one of you
19 that Charles Green, without defense, intentionally shot at,
20 trying to kill, Clifton Henry. And I believe the evidence will
21 show, and the doctor is here to testify, that Mr. Henry got some
22 birdshot in his arm and his leg as he was hiding behind the
23 pillar.

24 So the rules have to be followed. It's not clear and
25 convincing. It's beyond reasonable doubt. And there will be

1 times -- and I will tell you right now, I have taken a solemn
2 oath, and every day when I try these cases, I have to object.
3 If the rules aren't being followed, I have to go to His Honor I
4 have to object and I have to make a statement --

5 MS. SWANSON: Objection, Your Honor, this is not a
6 statement about what's going to be in evidence.

7 THE COURT: It's all right.

8 MS. CAMPBELL: Thank you, Your Honor. And so, that is
9 a natural part of a trial. And so in the trial, there will be
10 times that I object. And you will see me doing that.

11 I will tell you before I close and before we begin the
12 State's case that you also have a solemn oath. And I appreciate
13 the fact that you will honor that oath to listen to the
14 witnesses, to judge their credibility, to look at bias or motive
15 they may have to lie. And when the State finishes their case, I
16 will have an opportunity to speak with you again. Thank you
17 very much.

18 THE COURT: All right. Ms. Campbell, Ms. Swanson,
19 y'all come here one second. Since I don't know anything about
20 the case.

21 (Whereupon, a bench conference takes place off the
22 record.)

23 MS. SWANSON: May I proceed with my first witness, Your
24 Honor?

25 THE COURT: Not quite yet.

1 I don't keep things from y'all unless I have to. All
2 right. It's a little different when you preside over civil
3 cases. That's where somebody is suing someone over a car wreck
4 or something, because the judge meets with the lawyers and the
5 lawyers tell the judge everything that's coming in and what the
6 witness is going to testify to, and they've already taken
7 depositions and all that. In criminal cases, we don't have that
8 ability to take depositions.

9 Now, I mentioned to you you were going to have to pass
10 on the credibility of the witnesses. I just asked them if the
11 victim, since I heard the statements for the first time, had a
12 record. Generally, if you have a criminal record and you are a
13 witness in a trial, with some exception that can be brought out.
14 That does not
15 mean that you should disregard what the individual testifies to
16 who has a prior criminal record. That's just another factor
17 that you will take into account when you evaluate the testimony
18 of a witness. And it applies to any witness that comes, not
19 just the alleged victim, anybody that testifies. They don't
20 bring out, I've got a parking ticket back in 1967, you know.
21 But if it's a serious crime and a person has pled guilty, been
22 convicted of it, it can be brought out. Doesn't mean you should
23 disregard the testimony; just something for you to consider.

24 All right. Now.

25 MS. SWANSON: Thank you, Your Honor. State calls Erin

1 Mowery.

2 THE COURT: Oh, and, jurors, we did what's called
3 sequestering witnesses. That's so the witnesses can't hear what
4 the attorneys say they are going to testify to.

5 ERIN MOWERY,

6 having been duly sworn, testifies as follows:

7 THE CLERK: If you will state your name and spell it
8 for the Court, please, ma'am.

9 THE WITNESS: Erin Mowery, E-r-i-n, M-o-w-e-r-y.

10 DIRECT EXAMINATION

11 BY MS. SWANSON:

12 Q. Good morning. Ms. Mowery, please tell us who you work
13 for.

14 A. Beaufort County Dispatch.

15 Q. And how long have you worked there?

16 A. Six years.

17 Q. What is your job title?

18 A. Assistant supervisor.

19 Q. And describe what duties that entails.

20 A. I answer emergency, nonemergency lines, and dispatch
21 for agencies that we dispatch for.

22 Q. Were you working on April the 6th of 2011?

23 A. Yes.

24 Q. And did you receive a call regarding a gunshot that
25 day?

1 A. Yes, ma'am.

2 Q. All right. I'm going to hand you what's been marked as
3 State's Exhibit 23 and ask for you to identify this.

4 A. This is the disk that holds the information for the
5 call that I signed off on and listened to.

6 Q. Okay. And did you review this disk with me prior to
7 trial?

8 A. Yes, ma'am.

9 Q. All right. And how do you know that?

10 A. I have my initials and the date on that CD.

11 Q. What's the date?

12 A. The date is 11/13/2013.

13 Q. Is this a true and accurate recording of the call that
14 you took on April 6th?

15 A. Yes, ma'am.

16 MS. SWANSON: All right. At this time the State would
17 move Exhibit 23 into evidence and ask to publish it
18 to the jury.

19 MS. CAMPBELL: No objection.

20 THE COURT: Okay. You may publish 23.

21 (Exhibit 23 is moved into evidence.)

22 THE COURT: Jurors, publish in this instance means
23 play. When they put in a photograph and say, I want to publish
24 it to the jury, that means they are going to hand it to you and
25 you can pass it around.

1 (State's Exhibit 23, CD, played for the jury.)

2 BY MS. SWANSON:

3 Q. Ms. Mowery, we heard the term P-O-V, can you tell us
4 what that means?

5 A. Personally owned vehicle.

6 Q. Personally owned vehicle? Okay. And so that's -- all
7 right. I don't have any further questions for you at this time.
8 Please answer any questions that the defense may have.

9 MS. CAMPBELL: No questions.

10 THE COURT: Is she excused? Probably has other other
11 things to do. Do you all need her to hang around?

12 MS. SWANSON: I would ask that she be excused.

13 THE COURT: You are free to go.

14 (Whereupon the witness is excused.)

15 THE COURT: All right. Ms. Swanson, you know my rule,
16 inefficiency is not tolerated.

17 MS. SWANSON: Yes, sir.

18 THE COURT: What's the victim's name?

19 THE WITNESS: Clifton Henry.

20 THE COURT: In the indictment it says Henry Clifton,
21 which is what I read to the jury. I guess you would move to
22 amend that?

23 MS. SWANSON: I would move to amend that. It is
24 Clifton, last name Henry.

25 THE COURT: Okay. Just didn't want the jury to think

1 the judge couldn't read.

2 MS. SWANSON: I understand, Your Honor. Thank you.

3 Our next witness is Dr. Saeed Rehman.

4 DR. SAEED REHMAN,

5 having been duly sworn, testifies as follows:

6 THE CLERK: State your name and spell it for the Court,
7 please, sir.

8 THE WITNESS: My name is Saeed Rehman.

9 DIRECT EXAMINATION

10 BY MS. SWANSON:

11 Q. Good morning, Dr. Rehman.

12 A. Good morning.

13 Q. Can you please tell us where you work?

14 A. Beaufort Memorial Hospital in the emergency
15 department.

16 Q. Okay. And can you please tell us what sort of
17 background in medicine you have?

18 A. I'm trained in general surgery and family medicine.
19 I've been practicing emergency medicine for the last 17 years.
20 Last training was at Medical University of South Carolina.

21 Q. Okay. And have you ever testified in court before?

22 A. That's correct.

23 Q. How many times?

24 A. Over the last 17 years, 10 to 15 times.

25 Q. 10 to 15? And are you a board-certified --

1 A. I'm board certified in family medicine.

2 Q. -- physician? Okay. Have you been qualified as an
3 expert before in emergency medicine?

4 A. That's correct.

5 Q. About how many times?

6 A. 10 to 12 times.

7 Q. Okay.

8 MS. SWANSON: Your Honor, at this time the State would
9 offer Dr. Rehman as an expert in emergency medicine.

10 MS. CAMPBELL: No objection.

11 THE COURT: All right. Jurors, we probably shouldn't
12 even have to do that, you know. A physician is a physician, can
13 testify in their specialty, especially a treating physician.
14 But the rules say you have to qualify somebody as an expert if
15 they are going to give opinions based upon their expertise.
16 Before you can accept any opinions, they have to give them to a
17 reasonable degree of the specialty within the profession that
18 they are qualified in and so forth. Experts don't just apply to
19 physicians. Could be an electrician in a case involving
20 electricity or mechanical engineer in a case involving that, or
21 a carpenter involving a case dealing with an addition on to your
22 house. But bottom line, a layperson can't generally give
23 opinions in court. They have to be qualified as an expert.
24 Never have seen a Dr. Saeed before, but y'all evaluate his
25 testimony.

1 Okay. You may proceed.

2 MS. SWANSON: Thank you, Your Honor.

3 BY MS. SWANSON:

4 Q. Dr. Rehman, were you working on April 6th of 2011?

5 A. Yes, I was. May I see a copy of that chart please?

6 Q. Yes. I was just about to hand it up.

7 MS. SWANSON: May I approach the witness?

8 THE COURT: Sure.

9 BY MS. SWANSON:

10 Q. I'm handing up for you to refresh your memory the
11 medical records regarding the patient that you treated. And on
12 April the 6th, 2011, did you treat a
13 victim of a gunshot wound?

14 A. That's correct, ma'am.

15 Q. Okay. And who was that?

16 A. That was Mr. Clifton Henry.

17 Q. Okay. And can you describe the type of injuries that
18 Mr. Clifton Henry exhibited that day?

19 A. I don't remember this offhand. I will have to read:
20 Gunshot wound to hip, thigh, and upper extremity.

21 And then chief complaint says: Gunshot wound to left
22 forearm, and pellets in left arm and left thigh.

23 Q. Okay. And can you describe the severity of those
24 gunshot wounds?

25 A. On his X-rays, if we look at the record here --

1 MS. SWANSON: If I may hand up, Your Honor, State's
2 Exhibit 16 and 17 for Dr. Rehman to identify.

3 THE COURT: All right.

4 BY MS. SWANSON:

5 Q. If you can please describe what you see in these
6 pictures?

7 A. So it's a forearm X-ray that shows several small
8 pellets of what appear to be shotgun pellets without any
9 involvement of bone. That's all I have.

10 Q. Those are 16 and 17?

11 A. That's correct.

12 Q. Okay. Are those fair and accurate depictions of the
13 X-ray images that you saw for Mr. Clifton Henry in the ER back
14 in April of 2011?

15 A. That's correct.

16 MS. SWANSON: And at this time the State would move 16
17 and 17 into evidence.

18 MS. CAMPBELL: No objection. Okay.

19 (Exhibits 16 and 17 are moved into evidence.)

20 BY MS. SWANSON:

21 Q. If you need to use those images to describe to the jury
22 what you saw on Mr. Henry that day, you are welcome to.

23 A. Basically, it appears to be a shotgun victim involving
24 his left elbow, and pellets appear to be superficial, not
25 involving any vasculature. There's no evidence of any

1 fracture.

2 Q. Okay. I'm going to hand you what's been marked as
3 State's 13, 14, and 15, and ask for you to describe the images
4 that you see.

5 A. These are the pictures of his left elbow which show
6 multiple areas of penetration involving this forearm.

7 Q. And does it show another part of the body that was
8 impacted by a shotgun blast?

9 A. I can't make it out, but appears to be thigh.

10 Q. Okay. Is that how you recall Mr. Henry's injuries
11 appearing back in April of 2011?

12 A. Like I said earlier, I don't recall. I would have to
13 read the chart to give you areas of injuries. Will that be
14 enough?

15 Q. That's fine. Thank you. You may proceed, Dr.
16 Rehman.

17 A. Okay. So on his exam, when we talk about
18 musculoskeletal extremity, the extremity grossly normal, except
19 the dorsal aspect of the forearm, which is the back side of the
20 forearm, and left leg and palmar aspect of left forearm where
21 there was a decreased range of motion. There was some multiple
22 puncture wounds, swelling, limited range of motion and pain.
23 His circulation was intact. His sensation was intact.

24 As far as skin is concerned, basically the same exam;
25 puncture wound to his left forearm, his left hand.

1 Q. Now, once those shotgun pellets are in someone, are
2 they able to come out, or do they stay in the body?

3 A. Typically they are left alone.

4 Q. Okay. They are left alone. And would that cause any
5 long-term issues?

6 A. None that I know of.

7 Q. Okay.

8 A. With one exception, if it's involving the area where
9 the nerves are, then you are looking at chronic neuropathic pain
10 that it can cause.

11 Q. Okay. So the foreign objects within the body can cause
12 chronic pain?

13 A. That's correct.

14 Q. Is it possible that a shotgun blast to this area could
15 cause the death of someone?

16 A. If it's -- depends how close in range it is and what
17 part of the body the shotgun was aimed at. Had it been his
18 chest, at close range, yes, that would have been.

19 Q. How close was this to his chest?

20 A. Looking at his forearm, if he was defending himself, it
21 appears that it was quite close to his chest.

22 Q. Okay. Quite close. And had it been a little bit
23 closer, would it have possibly caused death?

24 A. Again, had it been close range to his chest, yes, that
25 would have caused his demise.

1 MS. SWANSON: Okay. Beg the Court's indulgence.

2 Thank you, Doctor. Please answer any questions --

3 THE COURT: Are you going to put the photos in?

4 MS. SWANSON: No, Your Honor. I was going to --

5 THE COURT: That's fine.

6 CROSS-EXAMINATION

7 BY MS. CAMPBELL:

8 Q. Good morning.

9 A. Good morning.

10 Q. I have a couple of questions for you. It's obvious,
11 but you were not at the scene, so you have no idea where anybody
12 was standing or how these shots were made or anything like that,
13 right?

14 A. That's correct.

15 Q. And when Mr. Henry was at the hospital or the emergency
16 room with you, he didn't try to tell you how all this went down,
17 right?

18 A. I don't exactly recall; it's been a while.

19 Q. If he had told you, you would have put it in your
20 notes, correct?

21 A. That's correct.

22 Q. If it is not in your notes, then he didn't tell you,
23 right?

24 A. Perhaps.

25 Q. Okay. If you could just go through your notes with me.

1 I want to go through a couple of things to make sure we
2 understand the type of injury that Mr. Henry had. There's a
3 notation based upon the X-rays that the State showed you that
4 there's no bone injury to Mr. Henry; is that correct?

5 A. That's correct.

6 Q. Okay. There's a notation that there's no signs of any
7 damage to any organs in his body, correct?

8 A. That's correct.

9 Q. That there are no findings - I guess would be the best
10 way to put it - that Mr. Henry was suffering any -- to the best
11 of your ability, you were not able to say that he was going to
12 have any prolonged, protracted loss of any bodily function as a
13 result of the birdshot hit in his arm, correct?

14 A. With an acute setting, we can't predict. That's why
15 you have long-term follow-up. And during that follow-up, it's
16 determined whether they are going to have a long-term impact.

17 Q. And when you made your notes, I think it's on Page 1 of
18 3 I've got here, you made a notation that at their worst, the
19 symptoms were moderate. Would that be fair? I will be happy to
20 show you the page if that helps.

21 A. I have Page 1 of 3. What paragraph are you on?

22 Q. I'm on the first paragraph, 17:09 would be the time
23 that this notion was made. It's just prior to discharge.
24 Mr. Henry was in the ER maybe two and a half hours at the most,
25 right?

1 A. Uh-huh.

2 Q. And so he came in around 15:00, he left around 17:00;
3 would that be fair to say?

4 A. That's correct.

5 Q. Okay. And do you see where it says: At the worst, the
6 symptoms were moderate? Would you like me to show it to you?

7 A. If you don't mind.

8 MS. CAMPBELL: May I approach?

9 THE COURT: Sure.

10 THE WITNESS: Symptoms were moderate just prior to
11 arrival. Symptoms have improved.

12 BY MS. CAMPBELL:

13 Q. Okay. Thank you. So you did make a notation under
14 severity of symptoms: At their worst, the symptoms were
15 moderate just prior to arrival. In the emergency department,
16 the symptoms had improved, correct?

17 A. That's correct.

18 Q. If you will look to Page 2 of 3, please, Doctor, under
19 the musculoskeletal extremities and skin there at the top of the
20 page, you've got a notation that the injury and/or puncture are
21 superficial.

22 A. That's correct.

23 Q. Is that correct?

24 A. That's correct.

25 Q. Superficial injury?

1 A. That's correct.

2 Q. Okay. You also have down here at 17:13 that the
3 patient's symptoms have markedly improved after treatment,
4 correct?

5 A. That's correct.

6 Q. Okay. So you cannot testify today that Clifton Henry,
7 when he left the emergency room, had any permanent, protracted
8 loss or impairment of any function of his organs in his body,
9 correct?

10 A. Like I alluded to earlier, an acute setting, you can't
11 determine that. It's the follow-up visit that
12 determines that.

13 Q. So the answer to my question is, yes, you cannot tell
14 us that today; you don't know?

15 A. In an acute setting, no, you can't. You can describe
16 what you see.

17 Q. You cannot testify that Mr. Clifton Henry has any
18 permanent disfigurement, protracted loss, or impairment of the
19 function of any organs in his body as a result of that birdshot,
20 right?

21 A. Not at that point, no, ma'am, no.

22 Q. Not at that point and not today, correct?

23 A. I can't tell about today. I haven't seen him. I
24 haven't examined him.

25 Q. Thank you so much. I'm not trying to trick you. You

1 didn't know anything about that then and you don't know anything
2 about it today, correct?

3 A. I don't know anything about it today.

4 Q. Thank you. Did Mr. Henry require any surgical repair
5 of a complex nature?

6 A. No, ma'am.

7 Q. Did Mr. Henry require the use of regional or general
8 anesthesia?

9 A. No, ma'am.

10 MS. CAMPBELL: That's all I have.

11 REDIRECT EXAMINATION

12 BY MS. SWANSON:

13 Q. Ms. Campbell asked you if any of the shotgun pellets
14 caused damage to an organ. Well, if they had hit an organ,
15 could they have caused damage?

16 A. Absolutely; had they gone through his arteries or his
17 nerves, he would have been impaired permanently.

18 Q. So he could have been impaired permanently from a
19 shotgun blast, and he could have also died from a
20 shotgun blast?

21 A. Any time somebody shoots you, as the saying goes, they
22 shoot to kill; that's the intent.

23 Q. Okay. Did the -- we talked about how his condition was
24 moderate after treatment. Did his symptoms improve with the
25 administering of narcotics?

1 A. We had given him pain control. He had received an
2 anti-inflammatory, Toradol, 30 milligrams at 16:10, with some
3 improvement in his pain.

4 MS. SWANSON: Thank you. Nothing further, Your
5 Honor.

6 THE COURT: Does he need to hang around?

7 MS. SWANSON: I would ask that he be excused.

8 MS. CAMPBELL: I have no objection.

9 THE COURT: You are free to go.

10 MS. SWANSON: Thank you, Your Honor.

11 (Whereupon the witness is excused.)

12 MS. SWANSON: State calls Investigator Brian Chapman.

13 THE COURT: Let's take 14 minutes. Don't talk about
14 it.

15 (Whereupon, the jury leaves open court at 10:35 a.m.)

16 THE COURT: We are at ease.

17 (Whereupon, recess transpired.)

18 THE COURT: All right. We need the defendant, I guess.
19 Jury is ready.

20 Bring the jury in.

21 (Whereupon, the jury returns to open court at 10:50
22 a.m.)

23 MS. SWANSON: Thank you, Your Honor. The State calls
24 Investigator Brian Chapman to the stand.

25 THE COURT: Okay.

1 BRIAN CHAPMAN,
2 having been duly sworn, testifies as follows:

3 THE CLERK: Please state your name and spell your name
4 for the court reporter.

5 THE WITNESS: Staff Sergeant Brian Chapman,
6 C-h-a-p-m-a-n.

7 DIRECT EXAMINATION

8 BY MS. SWANSON:

9 Q. Good afternoon. Who do you work for?

10 A. The Beaufort County Sheriff's Office.

11 Q. How long have you been with the Sheriff's Office?

12 A. Since November of 2002.

13 Q. And what's your position?

14 A. I am the supervisor of the investigations section for
15 the Hilton Head and Bluffton area.

16 Q. And back in 2011, in April of that year, what was your
17 position?

18 A. I was a sergeant for the northern investigations
19 section.

20 Q. And were you involved in an investigation surrounding
21 an incident that occurred on April 6th of 2011?

22 A. Yes, ma'am.

23 Q. Can you tell us about your involvement in the
24 investigation?

25 A. I assisted Staff Sergeant Fraser with his

1 investigation. I believe I was originally called -- when the
2 incident occurred, I was called to and went to Beaufort Memorial
3 Hospital, first place I went.

4 Q. Did you actually hear the call come out?

5 A. We usually keep a radio on in our office, so we heard
6 it go out.

7 Q. All right. About what time back in April was that?

8 A. I don't remember the exact time, but it was during the
9 broad daylight. It was sunny outside.

10 Q. And so you said that you responded first to Beaufort
11 Memorial?

12 A. Yes, ma'am.

13 Q. And who all was with you?

14 A. Staff Sergeant Fraser and Investigator Zsamar.

15 Q. What did you do when you first got to Beaufort
16 Memorial?

17 A. We made contact with the victim initially and then
18 another witness.

19 Q. And who was the victim?

20 A. The name escapes me off the top of my head.

21 Q. Can I hand up a report to you?

22 A. I have my incident report, if that works.

23 Q. Okay. You can refer to it.

24 A. That would be Clifton Henry.

25 Q. All right. And so did you meet with anyone else at the

1 hospital?

2 A. We did.

3 Q. Who was that?

4 A. Individual named Channon Preston.

5 Q. And you spoke with Mr. Preston about the incident?

6 A. Briefly, yes, ma'am.

7 Q. What did you do when you finished speaking to
8 Mr. Preston?

9 A. I responded to the incident location to assist there.

10 Q. Where was the incident location?

11 A. 350 Shanklin Road, in the Burton area of Beaufort.

12 Q. Is that within Beaufort County?

13 A. Yes, ma'am.

14 Q. Do you recall what all is in the -- what's at the
15 incident location?

16 A. It's a small shopping complex. There's a Food Lion, a
17 Chinese restaurant, and several other small businesses in that
18 complex.

19 Q. All right. And about what time did you arrive at the
20 crime scene?

21 A. It would have been within 20 -- 15 to 20 minutes after
22 the incident actually occurred. The hospital is just a mile and
23 a half from my office.

24 Q. Was there anyone at the crime scene when you arrived?

25 A. Yes, there were several Sheriff's Office deputies there

1 on the scene.

2 Q. Had the scene been secured?

3 A. They had put crime scene tape up, yes, ma'am.

4 Q. I'm going to show you what's been marked as State's
5 Exhibit 6 and State's Exhibit 7. If you can start with 6 and
6 describe what you see depicted.

7 A. Yes, ma'am. State's Exhibit Number 6, this is the Food
8 Lion there on Shanklin Road. This is the left side of the area.
9 There's a section of the sidewalk, I guess you would call it,
10 that's been roped off. And there's also a patrol car there and
11 an unmarked patrol car and then my vehicle.

12 Q. And so when you arrived that day on April 6th of 2011,
13 is that the scene that you came upon?

14 A. Yes, ma'am.

15 Q. And those photos accurately depict that scene?

16 A. Yes, ma'am.

17 MS. SWANSON: State would move 6 and 7 into evidence
18 and ask to publish to the jury.

19 MS. CAMPBELL: No objection.

20 (State's Exhibit 6 and 7 is moved into evidence.)

21 BY MS. SWANSON:

22 Q. Now, Investigator Chapman, when you got to the secured
23 scene, what was the first thing that you did?

24 A. I did a generic walk-around just to see what was there.
25 Then I documented the scene with digital pictures.

1 Q. What did you find there?

2 A. There were blood droplets along the sidewalk.

3 Q. And did you mark those blood droplets that you found?

4 A. Yes, ma'am, I did.

5 Q. How many did you locate?

6 A. I believe there were approximately seven.

7 Q. I'm going to show you State's Exhibit 8, 9, and 10 and
8 ask you to describe what is in these pictures.

9 A. For State's Exhibit number 8, this is a picture of
10 markers 1 through 7. This would have been from, again, on the
11 left side of the Food Lion, going left towards the Chinese
12 restaurant.

13 State's Exhibit number 9 is a reverse view of the same
14 picture, little bit lower down.

15 And then Number 10 is a close-up shot of one of the
16 blood droplets. The picture's zoomed in, so I can tell you
17 exactly which marker it is.

18 Q. Okay. Do those pictures fairly and accurately depict
19 the placement of those placards, the blood droplets and where
20 they were located?

21 A. Yes, ma'am, they do.

22 MS. SWANSON: State moves 8, 9 and 10 into evidence at
23 this time.

24 MS. CAMPBELL: No objection.

25 THE COURT: Okay.

1 (State's Exhibits 8, 9 and 10 are moved into
2 evidence.)

3 BY MS. SWANSON:

4 Q. Investigator Chapman, if you can refer to those
5 pictures again for me, and tell me what else you see besides the
6 blood droplets and the placards in those pictures. What are
7 those placards in front of?

8 A. If you are looking at Exhibit Number 8, there is a Blue
9 Rhino storage container. Blue Rhino is the prepaid propane
10 tanks you can refill and bring back.

11 And then there's a section of wall that includes a
12 window that goes directly into Food Lion. I believe the cash
13 registers are right in that area. And then there's a Primo
14 Water Cooler storage container, again where you bring in empty
15 water coolers and have them refilled, exchanged out.

16 Q. And that's State's 8.

17 If I may publish 9 and 10. And State's 10 is just an
18 example of one of those blood droplets that you found?

19 A. Yes, ma'am.

20 Q. Okay. After you put the placards out at the scene
21 noting where the blood droplets were found, what did you do at
22 that point?

23 A. We would also look for any potential evidence there,
24 shell casings, projectiles, anything else that would have been
25 relevant.

1 Q. Did you find anything that denoted a firearm being
2 present?

3 A. After that walk-through, we always do a final
4 walk-through of our scene before we release it and leave. When
5 I arrived there, there had been a patrol car parked right next
6 to the sidewalk. I had that officer move that patrol vehicle so
7 I could get a thorough look at everything. And once that
8 vehicle was moved, I located a shotgun wadding.

9 Q. I'm going to show you what's been marked as State's 11
10 and 12, and ask for you to describe what these depict.

11 A. Yes, ma'am. State's Exhibit Number 11 is a close-up
12 picture of the shotgun wadding I found, with a ruler. And then
13 Number 12 was a potential shotgun wadding that I also had
14 located.

15 Q. And did you collect those items?

16 A. Yes, ma'am, I did.

17 MS. SWANSON: Thank you. State moves 11 and 12 into
18 evidence.

19 MS. CAMPBELL: No objection.

20 THE COURT: All right.

21 (State's Exhibit Nos. 11 and 12 were received in
22 evidence.)

23 MS. SWANSON: I ask to publish to the jury.

24 BY MS. SWANSON:

25 Q. So when you photographed these items, they were where

1 you found them?

2 A. Yes, ma'am.

3 Q. And you say that you collected those items?

4 A. Yes, ma'am, I did.

5 Q. I show you what's been marked as State's 19 and State's

6 20. If you will please describe what these are.

7 A. Yes, ma'am. 19 is a shotgun wadding that I collected.

8 My signature is on it. And then Number 20 is also the potential

9 shotgun wadding I located. Again, my signature's on the back.

10 Q. Okay. And if you can just take those out for me and

11 just show the jury the photograph.

12 A. I need gloves.

13 Q. I'm sorry.

14 A. Thank you. For Number 19, again, this is the shotgun

15 wadding.

16 Q. Is that how that looked when you collected it?

17 A. Yes, ma'am.

18 MS. SWANSON: State would move 19 into evidence.

19 MS. CAMPBELL: No objection.

20 (State's Exhibit 19 is moved into evidence.)

21 THE WITNESS: This is Number 20. Again, this is --

22 MS. SWANSON: State moves 20 into evidence.

23 THE COURT: Comes in.

24 (State's Exhibit 20 is moved into evidence.)

25 BY MS. SWANSON:

1 Q. Are you familiar with firearms?

2 A. Yes, ma'am.

3 Q. And can you explain exactly what a shotgun
4 wadding is?

5 A. The shotgun wadding is the internal component of a
6 shotgun shell. It separates the shot, which is the pellets, and
7 the powder from the shotgun shell.

8 Q. Were these potential waddings -- were the waddings sent
9 off for testing of any sort?

10 A. No, ma'am.

11 Q. And why not?

12 A. For the testing of wadding, the examiner would need the
13 actual gun that fired it, along with the shell and some of the
14 pellets to actually do the entire comparison. If you don't have
15 those components, then there's no testing to be done.

16 Q. Okay. And was there a shell recovered?

17 A. I did not recover one.

18 Q. And did you recover a gun?

19 A. No, ma'am, I did not.

20 Q. After you collected the waddings, what other
21 involvement did you have in this case?

22 A. After I collected everything, I met with Staff Sergeant
23 Fraser and briefed him on everything that I collected.

24 Q. Did you talk to any potential witnesses at the Food
25 Lion Shopping Center?

1 A. I don't believe I did.

2 MS. SWANSON: Beg the Court's indulgence.

3 Thank you. Please answer any questions that

4 Ms. Campbell might have for you.

5 CROSS-EXAMINATION

6 BY MS. CAMPBELL:

7 Q. Hi. Good morning.

8 A. Good morning.

9 Q. Officer Chapman, you found two waddings; is that
10 correct?

11 A. Yes, ma'am, two pieces.

12 Q. Could that be from a double-barreled shotgun?

13 A. Could be.

14 Q. Could be?

15 A. Could be from a single-barrel. I don't know.

16 Q. I'm sorry, what did you say?

17 A. Could be from a single-barrel. I don't know. I didn't
18 recover a weapon, so I can't tell you where it came from.

19 Q. So we don't know. Just there's two waddings; could be
20 that two waddings from a double-barrel shotgun means that one
21 shot was fired; is that correct?

22 A. Could mean a wide variety of things.

23 Q. Is one of the possibilities in your experience with
24 firearms that the two waddings with a double-barrel shotgun
25 could mean that there was just one shot fired?

1 A. Normally, with my familiarization with double-barrel
2 shotguns, there's usually two triggers, so you have to separate
3 it, so it would be two shots.

4 Q. Could you get two waddings if you have only one shot?

5 A. It depends on the manufacturer of the shotgun shell.

6 Q. So you could?

7 A. I'm not familiar with all shotgun shells and their
8 internal components.

9 Q. The Solicitor asked you about recovering a shell; is
10 that correct?

11 A. Yes, ma'am.

12 Q. And you said you did not.

13 A. I did not recover a shell.

14 Q. Why do you think you didn't recover a shell?

15 A. Either someone picked it up or it was a single-shot
16 shotgun or a pump shotgun that someone didn't
17 cycle the motion.

18 Q. Did you talk with Clifton Henry at all about what his
19 allegations were against Charles Green?

20 A. I don't remember if I talked to him specifically. I
21 remember talking to the witness there.

22 Q. You did talk to this fellow Channon Preston, right?

23 A. Yes, ma'am.

24 Q. And to the best of your knowledge, have you been able
25 or anybody else in the Sheriff's Department been able to locate

1 Channon Preston for this trial?

2 A. I have not talked to Mr. Preston until after that date.
3 After that, I haven't seen him.

4 Q. Have you or anybody else with the Sheriff's Department
5 that you are aware of tried to locate this Channon Preston and
6 get him here to court?

7 A. I can only tell you I haven't. I can't speak for
8 anybody else.

9 Q. So you are not aware that they've been looking
10 for him?

11 A. Not to my knowledge. I have no idea.

12 Q. You have no idea, okay. When you talked to
13 Mr. Preston, did you take the time to determine whether or not
14 Mr. Preston had fired a gun? Did you try to get some gunshot
15 residue off of his hands?

16 A. After my brief conversation with him, I was needed
17 elsewhere, so I left.

18 Q. So your answer is?

19 A. I did not personally take any.

20 Q. Did you try to get any gunshot residue or do you know
21 if anybody tried to get gunshot residue off of Clifton Henry's
22 hands?

23 A. I don't have knowledge of that, no, ma'am.

24 Q. Were you involved in the processing of an automobile in
25 this case?

1 A. I was.

2 Q. Did you try to get gunshot residue off of the
3 automobile?

4 A. Yes, ma'am.

5 Q. Okay. Were you able to?

6 A. On the scene, I couldn't tell you that. It was sent
7 off for testing. I don't have the results in front of us.

8 Q. The Sheriff's Department sent off for testing some
9 scientific evidence related to this car and you are not aware
10 that it's ever been tested; is that right?

11 A. I have no idea. I know I collected it.

12 MS. CAMPBELL: That's all I have.

13 REDIRECT EXAMINATION

14 BY MS. SWANSON:

15 Q. Ms. Campbell asked you about the shotgun shell and what
16 do you think happened to it. Is it possible if someone drove up
17 in a car --

18 MS. CAMPBELL: Your Honor, I'm going to object. She's
19 leading the witness.

20 THE COURT: Well, she can argue that to the jury. Not
21 going to be able to ask him that.

22 MS. SWANSON: Thank you, Your Honor. Nothing
23 further.

24 THE COURT: Do you all need him to hang around?

25 MS. SWANSON: I would ask that he be allowed to be

1 excused.

2 MS. CAMPBELL: No objection.

3 THE COURT: You are free to go.

4 (Whereupon the witness is excused.)

5 MS. SWANSON: Thank you, Your Honor. State calls
6 Investigator Adam Zsamar to the stand.

7 ADAM ZSAMAR,

8 having been duly sworn, testifies as follows:

9 THE CLERK: State your name and spell it for the
10 Court.

11 THE WITNESS: Adam Zsamar, A-d-a-m, Z-s-a-m-a-r.

12 DIRECT EXAMINATION

13 BY MS. SWANSON:

14 Q. Good morning, Investigator. Can you tell us who you
15 work for?

16 A. Beaufort County Sheriff's Office.

17 Q. And what is your position?

18 A. I'm an investigator with the northern division.

19 Q. And were you working for the Sheriff's Office back in
20 April of 2011?

21 A. I was.

22 Q. Did you participate in the investigation of a crime
23 that occurred on April 6th of 2011?

24 A. I did.

25 Q. Okay. And tell us about your involvement in

1 that case.

2 A. I responded to Beaufort Memorial Hospital after the
3 incident was dispatched to the Sheriff's Office. I responded
4 with Sergeant Chapman and Staff Sergeant Fraser. During that
5 time I met with Channon Preston, I believe, in the parking lot.
6 And I conducted an interview with him.

7 Q. Okay. And did you talk to the victim at all?

8 A. I did not.

9 Q. Okay. And what kind of incident was it that came out
10 on the radio?

11 A. A shooting.

12 Q. Okay. After you interviewed Channon Preston in the
13 parking lot of the hospital, what did you do after that?

14 A. I went to the actual scene where the incident occurred
15 with Sergeant Chapman.

16 Q. And where was the scene?

17 A. Food Lion on Shanklin Road.

18 Q. Is that within Beaufort County?

19 A. Yes, it is.

20 Q. What did you do once you were at the scene with
21 Sergeant Chapman?

22 A. I assisted him with processing the crime scene. I also
23 checked the surrounding businesses for surveillance footage.

24 Q. Okay. Did you check the Food Lion?

25 A. Yes.

1 Q. Did they have any surveillance footage?

2 A. They did, but they only monitored the interior of the
3 store.

4 Q. Okay. Did any of the other businesses in the shopping
5 center have surveillance footage?

6 A. Yes, the Chinese restaurant at that strip mall or strip
7 store, businesses, they had surveillance footage monitoring
8 inside the store as well as outside out in the parking lot.

9 Q. Okay. And were you able to review that surveillance
10 footage?

11 A. I was.

12 Q. And did it capture any portion of this incident?

13 A. It did.

14 Q. Did you take custody of the surveillance system from
15 China Wok?

16 A. I did.

17 Q. Who gave you that surveillance system?

18 A. One of the employees. His name is Aaron Chang.

19 Q. What did you do with this surveillance system once you
20 got it from the China Wok employee?

21 A. I submitted it to our evidence division for forensic
22 processing.

23 Q. You requested that it be processed?

24 A. Yes.

25 Q. And who did you submit that request to?

1 A. Corporal Crumpton.

2 Q. Did you take pictures out at Murray Drive?

3 A. Yes.

4 Q. And why did you do that?

5 A. I was requested to by Staff Sergeant Fraser.

6 Q. And I'm going to show you what's been marked as State's
7 2 and 3, and ask if these are the pictures that you took of ■
8 Murray Drive?

9 A. Yes, they are.

10 Q. Okay. And those are fair and accurate depictions of
11 the way it appeared that day when you went out there?

12 A. Yes.

13 MS. SWANSON: State moves 2 and 3 into evidence.

14 MS. CAMPBELL: No objection.

15 THE COURT: Okay.

16 (State's Exhibit 2 is moved into evidence.)

17 (State's Exhibit 3 is moved into evidence.)

18 BY MS. SWANSON:

19 Q. Were you also involved in the processing of a vehicle
20 that was involved in this?

21 A. Yes, I assisted Sergeant Chapman.

22 Q. Okay. And do you recall what sort of vehicle it was?

23 A. It was a Mercury Grand Marquis.

24 Q. I'm going to hand you what's been marked as State's 4
25 and 5 and ask you if this is the car that you processed for

1 evidence?

2 A. Yes.

3 Q. Is that the way it appeared back in 2011?

4 A. Yes, ma'am.

5 MS. SWANSON: Okay. State moves 4 and 5 into
6 evidence.

7 MS. CAMPBELL: No objection, Your Honor.

8 THE COURT: Okay.

9 (State's Exhibit 4 is moved into evidence.)

10 (State's Exhibit 5 is moved into evidence.)

11 MS. SWANSON: I ask to publish to the jury.

12 THE COURT: You can do it.

13 BY MS. SWANSON:

14 Q. Now, did you guys obtain a search warrant for this
15 car?

16 A. Yes.

17 Q. And did you do anything to process this car?

18 A. Sergeant Chapman and I work intermittently together,
19 and processed, I think, for latent prints, possibly DNA
20 evidence, or GSR, gunshot residue.

21 Q. You did some processing for latent prints and gunshot
22 residue, and did anything come back on that?

23 A. Not that I recall.

24 Q. Do you remember if the gunshot residue kit was sent off
25 to SLED?

1 A. Yes.

2 Q. It was sent off to SLED? And what's SLED?

3 A. The State Law Enforcement Division.

4 Q. All right. And it came back with negative results?

5 A. I don't know the results. I didn't receive them.

6 MS. SWANSON: All right. Thank you. Beg the Court's
7 indulgence.

8 Please answer any questions Ms. Campbell might have for
9 you, Investigator.

10 THE WITNESS: Yes, ma'am.

11 CROSS-EXAMINATION

12 BY MS. CAMPBELL:

13 Q. Something that you were involved in in investigating
14 this case that the Solicitor did not go over with you is the
15 fact that you went to Channon Preston's home that he shared with
16 his mother; isn't that right?

17 A. She asked me if I went there.

18 Q. And when you went to that home, you were inquiring
19 about the many guns that were kept in that home on Murray Drive,
20 right?

21 A. Correct.

22 Q. You left that meeting with the understanding that
23 Channon Preston had two pistols, correct?

24 A. Correct.

25 Q. A rifle, correct?

1 MS. SWANSON: Your Honor, I'm going to object to
2 hearsay.

3 THE COURT: He said he went there?

4 MS. CAMPBELL: Correct.

5 THE COURT: He can answer that.

6 MS. CAMPBELL: Thank you.

7 MS. SWANSON: But I don't --

8 THE COURT: I don't really care what you think. Judge
9 rules. Live with it. Go ahead.

10 BY MS. CAMPBELL:

11 Q. And that Ms. Brown herself owned a pistol that she kept
12 in the home, correct?

13 A. Yes.

14 Q. Now, you were there at the time of the investigation
15 into the allegations from Clifton Henry that Charles Green had
16 shot at him, right?

17 A. Correct.

18 Q. And when you left Ms. Brown's home, you left there
19 understanding that all the guns were gone from her
20 home, right?

21 A. Understanding that all the guns were gone?

22 Q. All the guns were gone?

23 A. She told me one gun was gone.

24 Q. Okay. Her gun was stolen, but she didn't know who had
25 stolen it, correct?

1 A. That's what she informed me.

2 Q. Did you understand that Clifton Henry and Channon
3 Preston were friends?

4 A. Not that I'm aware of they were friends, no.

5 Q. You didn't have that information at the time?

6 A. I couldn't characterize their relationship.

7 Q. Do you believe that Channon Preston might have been
8 armed on 4/6/2011; is that why you were investigating his guns
9 at his home?

10 A. I wasn't investigating his guns at his home.

11 Q. Okay. You were investigating whether or not there had
12 been gunfire between Clifton Henry, Channon Preston, and Charles
13 Green at Murray Drive, weren't you?

14 A. No.

15 Q. You didn't talk with Ms. Brown about whether or not she
16 heard gunshots out on Murray Drive that same day?

17 A. I inquired whether she heard gunshot.

18 Q. You did? You were looking at whether or not there were
19 gunshots on Murray Drive on 4/6/2011. This is not the Food
20 Lion, this is Murray Drive, right?

21 A. I went there on the premise, based on the incident at
22 Food Lion, to follow up as part of the investigation at Murray
23 Drive to inquire if there was any altercation at Murray Drive.

24 Q. Right. And so you were trying to find out whether or
25 not there was gunfire on Murray Drive that day, right?

1 A. I was inquiring if there was an altercation at Murray
2 Drive.

3 Q. Okay. Did you ask her if she heard any gunshots?

4 A. Yes.

5 Q. Okay. So you were trying to find out if she heard
6 gunshots?

7 A. Correct.

8 Q. Okay. Thank you. And you left with the understanding
9 that there was the possibility of missing firearms on Murray
10 Drive, correct?

11 A. She informed me that she was missing her firearm.

12 MS. CAMPBELL: Okay. That's all I have.

13 REDIRECT EXAMINATION

14 BY MS. SWANSON:

15 Q. Investigator Zsamar, did you find any evidence of an
16 altercation at Murray Drive?

17 A. No.

18 Q. Did you find any evidence of a firearm being shot at
19 Murray Drive?

20 A. No.

21 Q. Any shell casings?

22 A. No.

23 Q. Shotgun waddings?

24 A. No.

25 Q. When you spoke to Channon Preston's mother,

1 Ms. Campbell asked you if you asked her if she heard gunshots;
2 did she hear gunshots?

3 A. No.

4 Q. What was she doing when Channon Preston and Clifton
5 Henry were on Murray Drive?

6 A. To the best of my knowledge, she said she was inside.

7 Q. She was inside? Okay.

8 MS. SWANSON: I have nothing further, Your Honor.

9 RECROSS-EXAMINATION

10 BY MS. CAMPBELL:

11 Q. In a follow-up to what the Solicitor just asked you,
12 you made a notation that the reason she didn't hear anything or
13 asserted she didn't hear anything is because there was a tractor
14 outside which was loud. That was her reasoning for why she
15 wouldn't have heard anything, right?

16 A. She did state that there was a tractor outside.

17 Q. And it was loud, and that's why she might not have
18 heard any gunshots, right?

19 A. She said it was loud.

20 Q. And you also notated in your report that upon your
21 arrival --

22 THE COURT: I don't believe she went into this. Now,
23 you know, let's be fair about it.

24 MS. CAMPBELL: Well, she asked about the condition of
25 the yard and he made a notation --

1 THE COURT: I think that's --

2 MS. SWANSON: No, I did not.

3 MS. CAMPBELL: -- whether or not he found anything.

4 THE COURT: Right. But that's enough of that.

5 MS. CAMPBELL: Thank you, Your Honor.

6 THE COURT: You can step down.

7 MS. SWANSON: Thank you. May Investigator Zsamar be
8 excused?

9 THE COURT: I told him he is.

10 (Whereupon the witness is excused.)

11 MS. SWANSON: State calls Billy Crumpton.

12 WILLIAM CRUMPTON,

13 having been duly sworn, testifies as follows:

14 THE CLERK: State your name and spell it for the Court,
15 please, sir.

16 THE WITNESS: My name is William H. Crumpton.

17 DIRECT EXAMINATION

18 BY MS. SWANSON:

19 Q. Who do you work for, Corporal Crumpton? Is it
20 Corporal?

21 A. Yes, ma'am. Beaufort County Sheriff's Office.

22 Q. Can you describe what you do for the Beaufort County
23 Sheriff's Office?

24 A. I work in the Computer Crime Unit and do forensics on
25 electronic media, digital media associated with computers or

1 cell phones or videos, video type coverage.

2 Q. So you deal with video evidence?

3 A. Yes.

4 Q. Did you receive a request from a case that occurred on
5 April 6th of 2011?

6 A. Yes, ma'am, I did.

7 Q. And what kind of request did you receive?

8 A. It was a request in reference to a shooting at the
9 China Wok here in Beaufort County. And the request was to
10 recover video associated with the incident at that location from
11 the unit or the DVR system they have located there in regards to
12 the shooting.

13 Q. And who did you receive the unit from?

14 A. Actually, I got it out of central receiving evidence.

15 Q. So it had been logged into evidence?

16 A. Correct, yes.

17 Q. And who did you receive the request from?

18 A. Investigator Zsamar.

19 Q. All right. And pursuant to that request, did you or
20 were you able to extract surveillance footage of this
21 incident?

22 A. Yes, I was.

23 Q. And how were you able to do that?

24 A. This particular video device, the DVR system they had,
25 was somewhat antiquated. And most of the systems like that, you

1 can stick a USB device in there and export the video out. In
2 this particular case, that function of this particular DVR was
3 not working. So we had to export it out using cables into a
4 system I have locally there in my office, and then use
5 another -- using another device, actually make the video
6 recording, the device being an Omni board. That's another tool
7 that we
8 use that you can capture video that's being displayed on a
9 computer monitor.

10 Q. Okay. So you were able to view the footage from the
11 outside of the store from April 6th of 2011?

12 A. Correct.

13 Q. And how did you know what time frame you were looking
14 at?

15 A. The information was provided to me in the request by
16 Investigator Zsamar.

17 Q. Okay. And did you ever meet with Investigator Fraser
18 to determine what exactly you were trying to look for on this
19 tape?

20 A. Yeah. We talked about looking for -- during the time
21 frame he gave me -- what type of vehicle to look for and where
22 it actually drove in reference to the store, the Bi-Lo, I think,
23 and then as it was leaving the scene. I think we actually
24 viewed that video together.

25 Q. And so even though you maybe extracted just a small

1 portion of the day's events, did the surveillance system capture
2 all of the comings and goings from that day?

3 A. Correct, yes.

4 Q. And once you extracted that information, did you burn
5 it on a disk?

6 A. Yes, ma'am.

7 Q. And you submitted that into evidence?

8 A. Yeah, I did.

9 (State's Exhibit 28, Screen Shot, was marked for
10 identification.)

11 (State's Exhibit 29, Screen Shot, was marked for
12 identification.)

13 BY MS. SWANSON:

14 Q. I'm going to show you a couple of State's Exhibits, 28
15 and 29, and ask you to identify what these are.

16 A. These are screen captures of portions of the video that
17 was -- that was extracted that day.

18 Q. Okay. And are those fair and accurate depictions of
19 still shots from that video?

20 A. Yes, ma'am.

21 MS. SWANSON: State moves 28 and 29 into evidence and
22 ask to publish to the jury.

23 MS. CAMPBELL: No objection.

24 THE COURT: All right.

25 (State's Exhibit 28 and 29 are moved in evidence.)

1 BY MS. SWANSON:

2 Q. Corporal Crumpton, I'm going to also hand you what's
3 been marked as State's 22 and ask for you to describe the disk
4 that I've handed you; what is that?

5 A. This is a copy of the actual disk that I made from
6 that -- that contained the video that I ended up submitting back
7 into the central receiving evidence department. We retain the
8 actual original that I make, and I actually turn in -- this is a
9 copy of that. And it's indicative of the case number, the
10 container indicating the DVR that was seized, and then my
11 initials on the date that I submitted it.

12 Q. Okay. Did you review that disk --

13 A. I did.

14 Q. -- with me --

15 A. Yes, I did.

16 Q. -- in preparation for trial? And is it a fair and
17 accurate depiction of the information that you extracted from
18 that surveillance device?

19 A. It is.

20 MS. SWANSON: State moves -- I'm sorry, what number is
21 that, 22?

22 THE WITNESS: It is 22.

23 MS. SWANSON: State moves 22 into evidence.

24 MS. CAMPBELL: No objection.

25 THE COURT: Okay.

1 (State's Exhibit 22 is moved into evidence.)

2 MS. SWANSON: And at this time I would ask to publish
3 to the jury.

4 MS. CAMPBELL: Your Honor, if it please the Court, if
5 the solicitor is going to pull the board up, my client and I
6 will need to move.

7 THE COURT: Okay. You can go watch.

8 BY MS. SWANSON:

9 Q. Corporal Crumpton, when you and Investigator Fraser
10 reviewed this video, what were you looking for? What area of
11 the camera were you looking in?

12 A. We were looking for the actual vehicle to arrive, which
13 I believe he -- it was believed to be that type of vehicle, or
14 the one pulling in front of the store in that fashion, and then
15 driving away. And that was specifically what we were looking
16 for.

17 Q. Okay. And so you were looking for it to come into the
18 parking lot?

19 A. Well, the shooting -- they knew the shooting took place
20 in front of the store.

21 Q. Okay.

22 A. So we were looking for a vehicle that arrives in front
23 of the store.

24 Q. And stops and then pulls away?

25 A. Correct.

1 MS. SWANSON: All right. And this is just on a loop,
2 so I'm going to stop it at this point. Thank you, Corporal
3 Crumpton. Please answer any questions Ms. Campbell may have for
4 you.

5 MS. CAMPBELL: May it please the Court.

6 THE COURT: Sure.

7 CROSS-EXAMINATION

8 BY MS. CAMPBELL:

9 Q. Thank you. Did you alter in any way this video?

10 A. No, ma'am.

11 Q. Okay. And we've just watched the video, correct?

12 A. Correct.

13 Q. And this video is a segment of time from 14:37 to
14 14:38, correct?

15 A. I don't remember the exact times, ma'am, but if that's
16 what you see, yes, ma'am.

17 Q. Well, I just watched it. We all just watched it. On
18 the bottom of the screen, it gives the date 4/6/2011, from 14:37
19 to 14:38.

20 A. Okay.

21 Q. And that would be 2:30; what time would 14:37 be?

22 A. 2:37. 14:37 would be 2:37.

23 MS. CAMPBELL: Thank you very much. That's all
24 I have.

25 MS. SWANSON: Nothing further. I would like to ask

1 that Mr. Crumpton be excused.

2 THE COURT: Free to go.

3 MS. SWANSON: Thank you, Your Honor.

4 (Whereupon the witness is excused.)

5 MS. SWANSON: If we may approach on a scheduling
6 matter, please.

7 (Whereupon, a bench conference takes place off the
8 record.)

9 THE COURT: We were just talking about time, not about
10 where we are going to put y'all up tonight. I need a break for
11 about 15 minutes, but we kill 15 minutes if we do that, because
12 then we have to take a break after the witness testifies anyway.
13 So take an early lunch. Be back at one o'clock. You can do
14 that, hour and twenty minutes.

15 (Whereupon, the jury leaves open court at 11:36 a.m.)

16 THE COURT: Okay. How much more does the State have?

17 MS. SWANSON: We have the victim, Investigator Fraser,
18 and Lasandra Young.

19 THE COURT: Okay. And you discussed with Mr. Green
20 about whether he's going to testify or not?

21 MS. CAMPBELL: I have, but I will discuss it with him
22 again.

23 THE COURT: Mr. Green, no rush or anything. After the
24 State puts up all their evidence, you have the option of
25 testifying or not. Ms. Campbell explained all of that to you.

1 There are good reasons for testifying, good reasons for not. I
2 don't know. Some people make good witnesses; some don't. If
3 you have a prior record, which obviously you have, they can
4 bring that out. But just think about it. You've got plenty of
5 time, but now is a good time to be thinking about it.

6 MS. CAMPBELL: Thank you, Your Honor.

7 THE COURT: All right.

8 MS. CAMPBELL: We are back at one?

9 THE COURT: Well, got to give them at least an hour, so
10 that's an hour and twenty minutes.

11 (Luncheon recess was taken.)

12 MS. SWANSON: Your Honor, it's been brought to my
13 attention by Lorraine Moss, the victim advocate with our office,
14 that she recognized one of the jurors as being a victim in a
15 currently pending case in our office. That's Juror Number 136,
16 David Haskin. He owns a motorcycle shop in the Burton area.
17 And he is a victim of a pending armed robbery, kidnapping, and
18 pointing and presenting. I didn't have any notes to reflect
19 that he came up to identify that, and so I would like to relay
20 that to the Court and Ms. Campbell.

21 MS. CAMPBELL: The solicitor informed me just a few
22 minutes ago of the juror's failure to answer truthfully during
23 the voir dire questions. I would ask that he be taken off the
24 jury and that Juror Number 142, which is the first -- well, he
25 actually was seated on the jury.

1 THE COURT: All right. We can do that.

2 MS. CAMPBELL: We ask to replace him. And that's --

3 142 is Kurt Hepfner.

4 THE COURT: All right. But let's bring that
5 juror in.

6 THE DEPUTY: Number again, please.

7 THE COURT: 136.

8 MS. SWANSON: Is it okay if Mr. Henry just remains
9 right there --

10 THE COURT: He can stay right there.

11 MS. SWANSON: -- for the time being?

12 Your Honor, after Mr. Henry's testimony, if we could
13 just take a brief recess and then have him exit.

14 THE COURT: That will be good.

15 MS. SWANSON: Okay. Thanks.

16 (Juror No. 136 is sworn.)

17 THE COURT: You're not in any trouble, but somebody
18 from Solicitor's Office indicated that you were a victim of an
19 armed robbery or something in a pending case.

20 A JUROR: Two years ago, yes, sir.

21 THE COURT: That case is still ongoing. So when I
22 asked the question, anybody ever been the victim of a violent
23 crime, you didn't come up.

24 A JUROR: I didn't consider it violent.

25 THE COURT: Armed robbery.

1 A JUROR: To me, a violent crime is more than just --

2 THE COURT: I understand. But bottom line is, since
3 they are prosecuting and there's a pending case, in fairness, we
4 are going to let you go.

5 But, unfortunately, he has to call.

6 THE CLERK: Yes, sir, after 6.

7 THE COURT: He will have the same problem in every
8 case. Just let him be relieved.

9 THE CLERK: Okay.

10 THE COURT: If you need a statement saying you've been
11 here, you can get it. You need your check, they will mail it to
12 you before Christmas.

13 THE CLERK: Yes, sir.

14 THE COURT: They can't have anybody on the jury when
15 they are representing you.

16 A JUROR: I understand.

17 (Juror 136 is excused.)

18 THE COURT: Who is the first alternate?

19 THE CLERK: Kurt Hepfner.

20 (Whereupon, the jury returns to open court at
21 01:08 PM.

22 THE COURT: Mr. Hepfner, you are now a regular juror.
23 We let Mr. Haskin go. He didn't do anything. He was a victim
24 of an armed robbery about a year ago. Solicitor's Office is
25 prosecuting it. They didn't recognize that until after the

1 fact. He's a victim. He didn't come up when I asked that. I
2 asked him why, and he said he didn't think armed robbery was a
3 violent crime. But anyway, you understand. It's like if she
4 was defending him or somebody else in the PD's office, you
5 wouldn't be able to serve. Not that he did anything wrong, it
6 just not only has to be right, has to look right. So there you
7 go. You may proceed.

8 MS. SWANSON: Thank you, Your Honor.

9 Our next witness is Clifton Henry. He has taken the
10 stand and needs to be sworn in.

11 THE WITNESS: C-l-i-f-t-o-n, H-e-n-r-y.

12 CLIFTON HENRY,

13 having been duly sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MS. SWANSON:

16 Q. Good afternoon, Mr. Henry. Where were you living back
17 in April of 2011?

18 A. On Murray Drive. And I moved off of Murray Drive onto
19 Laurel Bay Road.

20 Q. Is that in Burton?

21 A. Yes.

22 Q. That's in the Burton area?

23 A. Yes, ma'am.

24 Q. But you formerly lived on Murray Drive?

25 A. Yes.

1 Q. Okay. And do you remember what happened on April 6th
2 of 2011?

3 A. Yes, I do.

4 Q. Okay. Can you please tell the jury everything that you
5 can remember from that day?

6 A. I was leaving Laurel Bay Road going to Channon's
7 house.

8 Q. Channon who? I'm sorry.

9 A. I can't remember his last name. I'm sorry. And I got
10 to Channon's house. We was sitting outside on the chair by the
11 round table. And we sitting there talking. And we saw Charles
12 Green and his wife pull up into his yard. And he got out. They
13 both got out and went into the house. And he came back out,
14 came over by me and Channon. And he was telling me and Channon
15 he had just spent \$700. So Channon said, what did you spend it
16 on? And he never said. Channon said, well, you better give us
17 some of that money. He throw two \$20 bills on the table and
18 said, you two niggers take that. So we took the \$20 bill,
19 walked into Food Lion.

20 Q. Let me stop you right there. Where does Channon
21 Preston live?

22 A. On Murray Drive.

23 Q. Or back in 2011, he lived on Murray Drive?

24 A. Murray Drive.

25 Q. Okay. I'm going to show you what's been entered as

1 State's 2 and 3 and ask you to identify this residence.

2 A. This is the house Channon and his mother lived in.

3 Q. And does that show the table and chairs that you guys
4 were --

5 A. That's the table and chairs that we was sitting in.

6 Q. Okay. And so you had gone over to Channon's house and
7 you guys were sitting at this table and chairs and you were
8 talking?

9 A. Yes, we was.

10 Q. And you said Charles Green; now, did you know Charles
11 Green as Charles Green?

12 A. No, I don't. I know him as CJ.

13 Q. CJ. And so when CJ came over to talk to you and
14 Channon, where was Ashley?

15 A. She was going in the house.

16 Q. And who is Ashley?

17 A. CJ's old lady.

18 Q. Old lady, is that his girlfriend?

19 A. Girlfriend, yes.

20 Q. They live together?

21 A. Yes.

22 Q. Do you know what kind of car Ashley drives?

23 A. Grand Marquis.

24 Q. And do you recall what color?

25 A. If I'm not mistaken, it's gray.

1 Q. So after CJ throws \$20 at you guys, you go walking into
2 Foodlion. And what happens next?

3 A. We got to Foodlion, and CJ and his girl pull up in the
4 car. And he came to us, he was -- tears was coming out of his
5 eye. He say, I just been playing, man, let me get my money
6 back. So we both reach in our pocket and hand him \$20 back.
7 And he walk off. And when he walk off, he went to the car, sat
8 in the car, and spin around with the gun and shot the gun. The
9 pellets catch me in my quarters and my arm. And he drove off,
10 say, now y'all so-and-so laugh at that.

11 MS. SWANSON: Your Honor, at this time I would like to
12 ask that Mr. Henry be allowed to step down, and I would like to
13 play the surveillance video for him and have him narrate what's
14 going on.

15 MS. CAMPBELL: Your Honor, my question is, is she
16 talking about the car driving by or additional information?

17 MS. SWANSON: No, the car driving by.

18 MS. CAMPBELL: I'm not sure what there is for him to
19 narrate.

20 THE COURT: If the jury saw it, he doesn't need to give
21 his interpretation of it.

22 MS. SWANSON: It's just a little difficult to see,
23 so

24 MS. CAMPBELL: I would object. It's not necessary.

25 THE COURT: If it was exhibited to the jury, he can't

1 say what they should see. That's all. So I sustain her
2 objection.

3 MS. SWANSON: Okay.

4 BY MS. SWANSON:

5 Q. So if we can go into a little bit greater detail --

6 THE COURT: Hold on one second.

7 Jurors, I didn't see it. They had it over there. If
8 during jury deliberations you want to see it again, you can look
9 at it. But you don't need somebody to tell you what you are
10 looking at, is the bottom line. That's all. I'm not suggesting
11 you look at it again, but if you want to, I'm not keeping you
12 from doing that.

13 All right.

14 BY MS. SWANSON:

15 Q. Mr. Henry, if we can just go back and if you can
16 explain in as great detail as you can recall how exactly the car
17 pulled in, who was driving, who was seated where, and how the
18 gunman got out, and everything that happened that day when you
19 were at Food Lion. Okay?

20 A. Okay. We was at Food Lion. Me and Channon were
21 standing in front of the portable gas tanks. We was standing
22 there. We saw the car coming and we came in --

23 Q. Did you recognize the car as it was coming in?

24 A. Yes, I recognized the car. When they came in, they
25 came here. We were standing here. They came here. CJ's old

1 lady was driving. CJ got out, and came up to us and say, I was
2 playing, can I have my money back? And I reached in my pocket
3 and hand \$20 back. When he got in the car, he spin around with
4 the gun, pulled the shotgun out. I was standing behind the
5 pilot --

6 Q. Pillar?

7 A. -- the pillar of the Food Lion. My leg, one of my
8 legs was up on the thing like this. The pellet catch me in my
9 quarter. Then after he got in the car, she pulled off. Before
10 they pull off, he said, now y'all so-and-so laugh at that, and
11 she pulled off.

12 Q. Okay.

13 A. And I haven't seen him since until the detective came
14 to the hospital and put six faces in front of me and asked me to
15 pick out which one the guy was.

16 Q. Okay. Just before we get to the photo lineup, let's go
17 back. And you said that you were standing in front of the
18 propane tanks.

19 A. Uh-huh.

20 Q. And when you saw the gun, is that when you moved behind
21 the pillar?

22 A. I was behind the pillar looking right on at him. But I
23 saw when he got the gun, that's when I kind of put my body a
24 little bit closer behind. Because it didn't -- I would have got
25 my privacy and everything messed up too. So I stick my body in

1 a little bit. I catch on my quarters and my arm with the
2 pellets.

3 Q. Did you see what kind of gun it was?

4 A. It was a black double-barrel sawed-off shotgun.

5 Q. And did you see where he retrieved the gun? Where was
6 the gun?

7 A. In the floorboard of the car, on the passenger side.

8 Q. After you got shot, did you all call 911?

9 A. We was ready to go to one of Channon's friend's house
10 to call 911, but a girl that he know pull up in the parking lot
11 and took me to the hospital.

12 Q. Okay. And why were you not able to call 911 from the
13 parking lot?

14 A. Because we was getting ready to walk to the trailer
15 park right there where Channon know somebody and call 911.

16 Q. Did you have a phone on you?

17 A. No, I didn't.

18 Q. Were you armed that day when you were on Murray
19 Drive?

20 A. No, ma'am, I wasn't.

21 Q. You did not have a weapon of any sort?

22 A. No, ma'am.

23 Q. Were you armed when you were at the Food Lion?

24 A. No, ma'am.

25 Q. Was there gunfire on Murray Drive?

1 A. No, ma'am.

2 Q. Was there an altercation?

3 A. No, ma'am.

4 Q. Did you consider CJ or Charles Green an enemy?

5 A. No, ma'am.

6 Q. Did you have any problems with him?

7 A. No, ma'am.

8 Q. Did you have any words that day?

9 A. No, ma'am.

10 Q. Did you do anything to provoke a fight or a retaliation
11 against you?

12 A. No, ma'am.

13 Q. How long had you known CJ?

14 A. I would say for about -- between 7, 8, 9 months,
15 something like that.

16 Q. And that's because you guys used to live in the same
17 neighborhood?

18 A. Yes.

19 Q. All right. When you get to Beaufort Memorial,
20 Mr. Henry, I'm going to show you what's been marked as State's
21 Exhibit 13, 14, and 15, and ask you if these are the injuries
22 from April 6th of 2011?

23 A. Yes, ma'am.

24 MS. SWANSON: Okay. And I would ask that I be allowed
25 to enter these into evidence at this time, 13, 14, 15.

1 (State's Exhibits 13, 14, 15 has been received in
2 evidence.)

3 THE COURT: All right.

4 MS. SWANSON: And published to the jury.

5 THE COURT: You can do it.

6 BY MS. SWANSON:

7 Q. Mr. Henry, are the pellets from the shotgun blast still
8 in your body?

9 A. Yes, ma'am.

10 Q. Do you have any issues as a result of these injuries?

11 A. They bother me when it cold. They get real itchy and
12 doctor tell me he can't take them out.

13 MS. CAMPBELL: Objection, Your Honor, hearsay. He
14 can't testify --

15 THE COURT: Well, he can testify --

16 MS. CAMPBELL: -- what the doctor said.

17 THE COURT: -- they are still in.

18 BY MS. SWANSON:

19 Q. Okay. And so where did -- where exactly did the
20 shotgun blast hit you?

21 A. On my front of my quarters and on my arm right here.

22 Q. Did Investigator Fraser come talk to you when you were
23 at the hospital?

24 A. Yes, he did.

25 Q. And you said that he presented you with a photo

1 lineup?

2 A. Yes, he did.

3 Q. And I hand you what's been marked as State's 18, and
4 ask you if this is the photo lineup that he presented
5 you with?

6 A. Yes, ma'am, that's it.

7 Q. Okay. And were you able to identify someone?

8 A. Yes, ma'am.

9 Q. And how do you know that you identified someone?

10 A. Because I know his face.

11 Q. Okay. Did you do anything to note that you
12 identified --

13 A. I circled it and put my initial on it.

14 Q. Okay. And who did you identify?

15 A. Charles Green.

16 Q. Who you know as CJ?

17 A. CJ.

18 Q. And can you identify CJ or Charles Green in the
19 courtroom today?

20 A. Yes, ma'am.

21 Q. Where is he sitting?

22 A. He's over there. (Witness indicates.)

23 Q. Next to Ms. Campbell?

24 A. Yes, ma'am.

25 Q. How quickly were you able to identify him?

1 A. As soon as he showed me this photo.

2 Q. And going back to Food Lion, was it daylight out or was
3 it nighttime?

4 A. It was daylight.

5 Q. And do you wear glasses?

6 A. I wear reading glasses.

7 Q. Just reading glasses?

8 A. Yes, ma'am.

9 Q. So you were able to see him clearly?

10 A. Yes, ma'am.

11 MS. SWANSON: Beg the Court's indulgence.

12 BY MS. SWANSON:

13 Q. Clifton, at this time we are going to talk a little bit
14 about your past. Okay?

15 A. Yes, ma'am.

16 Q. Back in 2002, you had some run-ins with the law,
17 right?

18 A. Yes, ma'am.

19 Q. Okay. And do you have a strong arm robbery
20 conviction?

21 A. Yes, I do.

22 Q. Do you have a forgery conviction?

23 A. Yes, I do.

24 Q. And do you have a use of a vehicle without permission
25 conviction?

1 A. Yes, ma'am.

2 Q. Do you recall when those convictions were from?

3 A. I can't remember the year and the date, but, yes.

4 Q. About 2003?

5 A. Yes, ma'am.

6 Q. All right. And did you get some prison time for
7 those?

8 A. Yes, I did.

9 Q. And did you serve that time?

10 A. Yes, I did.

11 Q. Tell us a little bit about what was going on in your
12 life at the time of these convictions.

13 A. I had a drug problem.

14 Q. Okay. And what kind of drug problem were you
15 struggling with?

16 A. Crack cocaine.

17 Q. All right. Are you proud of those things that
18 you did?

19 A. No, I'm not.

20 Q. And are you telling the truth here today?

21 A. Yes, ma'am.

22 Q. Did you steal anything from Charles Green that day?

23 A. No, I haven't. No, I didn't.

24 Q. Did you ever owe him money?

25 A. No, ma'am.

1 Q. Did you ever take money from him?

2 A. No, ma'am.

3 Q. Did you ever threaten him in any way?

4 A. No, ma'am.

5 MS. SWANSON: Please answer any questions that

6 Ms. Campbell might have for you.

7 THE WITNESS: Yes, ma'am.

8 MS. CAMPBELL: May it please the Court.

9 THE COURT: Okay.

10 CROSS-EXAMINATION

11 BY MS. CAMPBELL:

12 Q. Mr. Henry, you've carried a gun in the past, haven't
13 you?

14 A. No, ma'am, I never owned a gun.

15 Q. Did you ever carry a gun? Did you ever hold a gun in
16 the past?

17 A. I have hold one, but I never shot a gun and never owned
18 a gun.

19 Q. Okay. So when your armed robbery conviction was
20 reduced down to strong arm robbery, you did not have a gun at
21 that time?

22 A. No, ma'am.

23 Q. Okay.

24 MS. SWANSON: Your Honor, I would object. I don't
25 think that there's been any --

1 THE COURT: All they can put in is the record. We
2 don't rehash it; otherwise, you just spend all the time retrying
3 cases. It's only admitted to show that he had a prior record.
4 That's all. And whether you feel it impacts his credibility,
5 that's up to y'all.

6 BY MS. CAMPBELL:

7 Q. The use of vehicle without permission, was that a car
8 that you stole?

9 A. No, that was my girlfriend's.

10 Q. And so the strong arm robbery --

11 THE COURT: He pled guilty to apparently the strong arm
12 robbery. That's the end of it. You can argue to the jury they
13 shouldn't believe him because he committed a robbery, but you
14 can't go into it.

15 BY MS. CAMPBELL:

16 Q. Mr. Henry, do you recall speaking to Officer Fraser on
17 April 6th, 2011, at the Beaufort Memorial Hospital?

18 A. Yes, ma'am.

19 Q. Were you truthful with Officer Fraser on that day?

20 A. Yes, ma'am.

21 Q. Okay. And so on the day that you spoke to Officer
22 Fraser and indicated to him that you walked over to CJ's car and
23 at the car handed him back the money, is that how it happened?

24 A. No, ma'am.

25 Q. Okay.

1 A. No, ma'am.

2 Q. So Officer Fraser must be wrong when he writes that
3 down as your statement?

4 A. He didn't walk -- he walked over to us.

5 Q. Okay. So Officer Fraser's indicating that you walked
6 over to the car and handed money to CJ?

7 A. No.

8 Q. And do you recall telling Officer Fraser that at that
9 time you were standing at the car door and that's when you were
10 shot at?

11 A. No.

12 Q. Okay. Do you remember talking to Officer Fraser,
13 giving him a second statement? Do you remember talking to him a
14 couple of days later about this as they were continuing their
15 investigation?

16 A. Yes, ma'am.

17 Q. Okay. Do you remember changing parts of your story
18 about what had happened?

19 A. No, ma'am, I haven't changed it.

20 Q. Do you remember at that time telling Officer Fraser
21 that you were hiding behind a pillar when you heard a shot ring
22 out?

23 A. I wasn't hiding behind. I was behind a pillar. I saw
24 that he pulled a gun, and I slide a little further into the
25 pillar to protect myself.

1 Q. And so Officer Fraser's reports don't then reflect what
2 you told him; is that what you are saying?

3 A. I didn't walk to the car. He shot me.

4 Q. Now, Channon Preston, that's a fellow, correct?

5 A. Excuse me?

6 Q. That's a guy; Channon Preston is a guy?

7 A. Yes, ma'am.

8 Q. Is your friend, right?

9 A. Yes, ma'am.

10 Q. Okay. And you've known him to be armed and carry a
11 gun, right?

12 A. I know him to had one, but I never know him to carry
13 one.

14 Q. Okay. Do you recall telling Officer Fraser when he was
15 speaking with you about this that CJ just came over and just
16 threw down some money and said, here, take my money?

17 A. Yes, he did.

18 Q. Okay.

19 A. He throw two \$20 bills on the table and say, you two
20 broke, so take that.

21 Q. Right. And today you've testified that Channon said to
22 him: You better give us some of that money?

23 A. No. He say: Why you didn't give us some of that money
24 you went and spent today?

25 Q. Okay. So I thought I heard you say: You better give

1 us some of that money?

2 A. No.

3 Q. That's not what you've just testified to?

4 A. No, ma'am. No, ma'am.

5 Q. Okay. Now, let me just make sure I understand. Tell
6 me again, when you are saying that Charles and Ashley came into
7 the Food Lion parking lot --

8 A. Uh-huh.

9 Q. -- when did you first see them?

10 A. When they pull in to the lane, when you stand up here
11 and they pull in, they pull around like this here. (Witness
12 indicates.)

13 Q. And what did you do at that moment?

14 A. We stand right there until he got out of the car.

15 Q. Right. Okay. So you are telling us today that then
16 Charles Green gets out of the car and comes over to you; is that
17 what you are telling me?

18 A. Came over to us and asked to -- tell us that he was
19 just playing, he would like to have his money back.

20 Q. He said: Give me my money back; right?

21 A. And we gave it back to him.

22 Q. And you are telling the jury that you then gave back
23 the money right there, correct?

24 A. Yes. Yes, ma'am.

25 Q. And once you gave him the money back, this is what you

1 are telling me, he turns around and he goes back to his car; is
2 that right?

3 A. Yes, ma'am.

4 Q. Okay. What do you do as he's walking back to
5 his car?

6 A. I was standing behind the pillar.

7 Q. I'm sorry, what?

8 A. I was standing behind the pillar.

9 Q. So you moved from where you were and put yourself
10 behind the pillar at that moment?

11 A. Where I was standing, I was behind the pillar and
12 Channon was out in the open. But he went to the car, I got up
13 to the pulley (sic), pulley (sic), but when I saw him pull the
14 gun out, I pulled myself into the pulley (sic) a little bit more
15 to protect myself.

16 Q. Right. This is what I'm trying to get at here, because
17 it's not really making a whole a lot of sense. You are telling
18 us he walks back to his car. Is that when he got behind the
19 pillar, or do you get behind the --

20 A. When he got out of the car, I was here. Channon was
21 here. And I was standing right here. I wasn't to the pulley
22 (sic), I was like in front of the pulley (sic). But when he
23 walked back to the car, I lean up on the pulley (sic), and when
24 I saw him pull the gun out, I
25 pull myself into the pulley (sic).

1 Q. Are you saying pulley?

2 A. Yes.

3 THE COURT: He's saying pillar. That's how he
4 pronounces it. You know what he's saying.

5 BY MS. CAMPBELL:

6 Q. Okay. So now you are telling me that you didn't move
7 behind the pillar until you saw the gun?

8 A. I pulled myself into the pulley (sic) when I saw the
9 gun.

10 Q. Okay. And so any prior statements that you've made,
11 that you actually walked over to the car, gave him the money at
12 the car, and that he shot you right there in the car doorway, is
13 just plain false?

14 A. No, I didn't. I didn't, no.

15 Q. You never said that?

16 A. No.

17 Q. Okay. Now, when you first saw Charles at Murray Drive
18 and he comes over to the table, I believe that where you guys
19 were sitting, isn't that like a card table where y'all play
20 cards sometimes?

21 A. No, we never played cards there.

22 Q. Did you testify just now before the jury that he came
23 over and he said something to you about \$700?

24 A. He came over to the table. We sitting at the table.
25 He came over to the table and he said: I just spent \$700.

1 Channon said: What you spend it on?

2 But he never said what he spent it on. Channon said:

3 Well, you could have gave us some of that money.

4 And that's when he take two \$20 bills and put it on the
5 table.

6 Q. Do you recall telling Officer Fraser that it was
7 \$1,100, not \$700?

8 A. No, no.

9 Q. You testified that when Charles came up to you at the
10 Food Lion - just now today - that he was crying, that he had
11 tears in his eyes?

12 A. He had tears coming out of his eyes, yes.

13 Q. Saying to you: Please give me my money back?

14 A. He said: I'm just playing, can I have my money back?

15 Q. Okay. After the birdshot pellets hit your arm and your
16 leg, you said you were going to walk over to the trailer park,
17 is that right, to try to call 911?

18 A. Yes, ma'am.

19 Q. And you didn't do that because you caught a ride to the
20 hospital?

21 A. Channon -- one of Channon's girlfriend pulled up at the
22 time. She brought us to the hospital.

23 Q. And when was the last time you saw Channon?

24 A. I hadn't saw him since that day.

25 Q. Not since that day?

1 A. Not since that day.

2 Q. Are you testifying today before this jury that Charles
3 just threw down \$40 and you did not take money from him?

4 A. I did not take no money from him.

5 Q. And that he had \$40 on him and just threw it down on
6 the table and said: Here, have my money?

7 A. I couldn't tell you how much he had on him, but I know
8 he throw two \$20 bills on the table.

9 Q. So if you had \$20 and Channon had \$20, tell me again
10 how Channon returned his \$20 to Mr. Green?

11 A. We both reach in our pocket and hand it to him.

12 Q. Okay. At the car?

13 A. No, in front of the Food Lion by the pillar, the pulley
14 (sic).

15 Q. When he walks --

16 A. When he walked, get out of the car and walk over to
17 us.

18 Q. Okay. Why were you at the Food Lion?

19 A. Because we was going -- we was going to spend the money
20 when he came up and pull up in the car and got out of the car
21 and came over to us and was crying, said he was just playing,
22 and said he would like to have his money back, and we gave it
23 back to him.

24 MS. CAMPBELL: Just one second, Your Honor.

25 BY MS. CAMPBELL:

1 Q. You never -- okay. You never told Channon to go in the
2 trailer and get the gun and come back out?

3 A. No, ma'am.

4 Q. No?

5 A. No, ma'am.

6 Q. To get his gun?

7 A. No, ma'am.

8 Q. You never fired at his feet?

9 A. No, ma'am.

10 Q. You never told him to dance?

11 A. No, ma'am.

12 Q. The Solicitor asked you about turning your life around
13 with the drug problem and things in the last 10 years; is that
14 what you've done?

15 A. Yes, I'm working on that now.

16 Q. How are you working on that?

17 MS. SWANSON: Objection, Your Honor.

18 THE COURT: That's right. You can't go there.

19 BY MS. CAMPBELL:

20 Q. Do you remember telling the first officer at the
21 hospital that he threw down -- I'm sorry. Do you remember
22 telling the nurses who were talking to 911 that it was a \$100
23 bill and not two 20s?

24 A. No, ma'am.

25 Q. So when the nurses are telling 911 what you are saying,

1 they must be lying, right?

2 A. Yes, ma'am.

3 Q. Not \$100 bill, two 20s?

4 A. Yes.

5 MS. CAMPBELL: That's all.

6 MS. SWANSON: I don't have anything further for
7 Mr. Henry. And just ask we take a brief recess.

8 THE COURT: Okay. Jurors, don't talk about the case.
9 Step out.

10 (Whereupon, the jury leaves open court at 01:38 p.m.)

11 MS. SWANSON: Thank you, Your Honor. Mr. Henry is
12 going to be transported back out.

13 Thank you, Mr. Henry. Have a safe trip. Good luck.

14 THE COURT: You might have to call him back.

15 MS. SWANSON: I'm going to ask that he be excused. We
16 need to transport him back to Horry County because he has
17 medications that he needs to receive.

18 MS. CAMPBELL: I don't have any objection.

19 MS. SWANSON: Okay. Just making sure.

20 THE COURT: If you let him go, you are not going to be
21 able to recall him.

22 MS. SWANSON: Right.

23 (A recess transpired.)

24 MS. SWANSON: Your Honor, before the jury gets in, my
25 understanding with your ruling as to Mr. Green's statement was

1 that we can say, I don't know nothing.

2 THE COURT: That's good. That's it.

3 MS. SWANSON: Just making sure.

4 THE COURT: But you can't comment on it because

5 that's -- you can't argue it. You can bring it in.

6 (Whereupon, the jury returns to open court at 01:52

7 p.m.)

8 THE COURT: You may proceed.

9 MS. SWANSON: Thank you, Your Honor. State calls
10 Investigator Jeremiah Fraser to the stand.

11 THE COURT: All right, Officer Fraser.

12 JEREMIAH FRASER,

13 having been duly sworn, testifies as follows:

14 THE CLERK: State your name and spell it for the court
15 reporter.

16 THE WITNESS: Staff Sergeant Jeremiah Fraser,

17 F-r-a-s-e-r.

18 DIRECT EXAMINATION

19 BY MS. SWANSON:

20 Q. Investigator Fraser, tell us who you work for.

21 A. I work for the Beaufort County Sheriff's Office, in
22 criminal investigations.

23 Q. How long have you worked for the Sheriff's Office?

24 A. Since 2002.

25 Q. And how long have you been in investigations?

1 A. About eight years.

2 Q. Okay. And were you in investigations in April
3 of 2011?

4 A. Yes, I was.

5 Q. And did you work a case that occurred on April 6th of
6 2011?

7 A. Yes, I did.

8 Q. Can you tell us about your investigation into that
9 case?

10 A. I can. Investigator Staff Sergeant Chapman, myself and
11 Investigator Zsamar were all at our office which is on Duke
12 Street. We monitor the radio all the time for major incidents
13 to come out. It increases our response time to those major
14 incidents. So we are always listening, and we heard the gunshot
15 victim come out of Beaufort Memorial Hospital. The three of us
16 immediately
17 left and went to the hospital. We actually beat the patrolman
18 there. And we started conducting the investigation into the
19 shooting.

20 Q. Okay. And so you responded first to the hospital, and
21 who did you meet with there?

22 A. We started identifying victims, witnesses, anybody that
23 we could that would have information about the events. I
24 identified the victim in the case, Mr. Henry, who was in the ER,
25 and Channon Preston, who was outside the ER.

1 Q. Okay. And so you interviewed Mr. Henry at that
2 time?

3 A. I did. The best way to attack something like that for
4 us is to separate into groups. That way we can get the
5 information quicker. At the time we didn't know who the
6 suspects in the case were, so the quicker we could get the
7 information, we could get it out to the patrolmen that are on
8 the streets so we can have a quicker response time to find the
9 defendants in the case,
10 the suspects, whatever the case may be.

11 I had Investigator Chapman and Zsamar working the
12 parking lot, looking for witness, and they found Channon
13 Preston. I went and contacted the victim who was in the
14 hospital.

15 Q. And so were you later briefed by Investigator Chapman
16 and Investigator Zsamar about what Channon Preston had to say?

17 A. I was, yes.

18 Q. And did that match up with what the victim had to say
19 to you?

20 MS. CAMPBELL: Objection, Your Honor.

21 THE COURT: Well, that's why they both testified; he
22 had been sitting in here the whole time. Go ahead.

23 BY MS. SWANSON:

24 Q. And did that match up with what the victim Clifton
25 Henry had to say to you?

1 A. It did, yes, ma'am.

2 Q. Okay. When you interviewed Clifton Henry, did he know
3 who shot him?

4 A. He did. He was able to give me a description of the
5 man. He told me he knew him as CJ. He told me where he stayed
6 at. He told me some things physically about him that he knew,
7 characteristics, things like that, and the location where he
8 stayed at with his girlfriend. I think at the time he even told
9 me his girlfriend's name, so made identifying him fairly easy.

10 Q. So were you able to determine who CJ was?

11 A. I was. Once I got the information, what I did was I
12 made a request to Intel while still at the hospital to run an
13 address check to see who lived at that residence, and it came
14 back Ashley Thomas and Mr. Green. Mr. Green fit the physical
15 characteristics and some other things that I learned. I had him
16 put in a six-pack photo array. I ran at the office, got the
17 photo array and returned, and showed it to the victim.

18 Q. Okay. And when you say that residence, would that
19 be -- what residence is that? Was that on Murray Drive?

20 A. It was. I'm sorry. Yes, it was the defendant's
21 residence or Murray Drive.

22 Q. What address is that?

23 A. Off the top of my head, I don't know.

24 Q. ■ Murray Drive?

25 A. Yes, ma'am. Yes, ma'am, ■ Murray Drive.

1 Q. Okay. And is that located near ■ Murray Drive?

2 A. Right across the street, yes.

3 Q. And what was the significance of ■ Murray Drive?

4 A. That's where they had indicated they had been at. They
5 were in a yard; him and Channon were in the yard, and they
6 initially made contact with CJ there, which is right across the
7 street from 69.

8 Q. Okay. You mentioned a photo lineup that you had
9 prepared or that Intel prepared. I'm going to hand you what's
10 been marked as State's Exhibit 18 and ask that you identify this
11 document.

12 A. This is the photo lineup that I had prepared. I know
13 this is mine because of the evidence bag; bears my signature.

14 Q. Okay. Can you tell us how you presented that to
15 Clifton Henry?

16 A. Yes, ma'am. On the back of our photo lineups, we have
17 instructions that we read to the person beforehand, before we
18 show them the pictures. Would you like me to read the
19 instructions?

20 Q. Yes, please.

21 A. Prior to showing a photo lineup, we go over these
22 instructions with the person to make sure they understand it.
23 It says: You will be asked to look at a group of photographs.
24 The fact that the photographs are shown to you should not
25 influence your judgment. You should not conclude or guess that

1 the photographs contain the picture of the person who committed
2 the crime. You are not obligated to identify anyone. It is
3 just as important to free innocent persons from suspicion as it
4 is to identify guilty parties. Please do not discuss the case
5 with other witnesses nor indicate in any way that you have
6 identified someone in this case -- or rather someone.

7 Q. How did you hand Mr. Henry the photo lineup?

8 A. When we hand him the arrays, we give them to him in
9 this manner with the instructions up, and we will flip it over
10 for them and present the array to them.

11 Q. And you did just that with Mr. Henry?

12 A. Yes.

13 Q. How long did Mr. Henry look at that photo lineup?

14 A. He identified CJ as Number 2 immediately.

15 Q. Okay. And did he tell you how certain he was?

16 A. He said he was 100 percent certain.

17 Q. 100 percent, okay.

18 MS. SWANSON: At this time State would move Exhibit 18
19 into evidence.

20 THE COURT: Okay.

21 (State's Exhibit 18 is moved into evidence.)

22 BY MS. SWANSON:

23 Q. Just so that it is clear, was Charles Green situated in
24 the Number 2 slot?

25 A. Yes, that was Charles Green.

1 Q. And that's what Mr. Henry circled?

2 A. Yes, that's correct.

3 Q. And initialed? Okay. Did you go to the crime scene
4 after you were finished interviewing at the hospital?

5 A. I did. I met with Sergeant Chapman and Investigator
6 Zsamar at the crime scene. They were done processing it by that
7 time.

8 MS. SWANSON: At this time, Your Honor, I'm going to
9 ask Investigator Fraser to step down, and I have State's Exhibit
10 26 and 27 that I would like for him to be able to refer to.

11 THE COURT: Okay.

12 BY MS. SWANSON:

13 Q. Tell us what we are looking at here.

14 A. This is an overview aerial map of the area where the
15 incident took place. This being the Food Lion, Laurel Bay Road.
16 The main gate of Laurel Bay is right up here. Right up in this
17 area right up here is the main gate. Joe Frasier Road right
18 here, runs right here.

19 Q. Okay. Point out the incident location.

20 A. The incident location is right here. The Food Lion off
21 of Shanklin Road.

22 Q. And what is in the general area of Shanklin Road?

23 A. Generally, there is a mobile home park that's right
24 here. It's very close to Shanklin. There's also mobile homes
25 right around here. This is an apartment complex right across

1 the street. As you come down, Shanklin Elementary School is
2 right there. Within this complex there's several businesses.
3 There is the Chinese food place. There is an after-school or
4 learning center, Haven, Haven Learning Center is right there.

5 Q. Is that between the Food Lion and the Chinese
6 restaurant?

7 A. Yes, ma'am. The Chinese food restaurant is at the very
8 end of the Food Lion complex.

9 MS. SWANSON: If we can stop right there. I'm sorry.
10 And if I can enter State's Exhibit 26, and then I'm going to
11 refer you to State's 27.

12 THE COURT: Okay.

13 (State's Exhibit 26 is moved into evidence.)

14 BY MS. SWANSON:

15 Q. Now, if you can just show us a little bit more about
16 the shopping center.

17 A. Yes, ma'am. This is Shanklin Road that runs up along
18 the shopping center. This is where access to the shopping
19 center is. This is Food Lion itself, the main portion of the
20 complex. Right here is where the shooting -- right here, I'm
21 sorry, rather, right in this area is where the shooting took
22 place. This is a walkway leading back to the child development
23 center right here. And then this right here is the Chinese
24 restaurant where we pulled the video surveillance from. This is
25 an exit on to Shanklin Road. And this is the exit on to

1 Shanklin Road. So there's two exits to Shanklin from here.

2 Q. If we can just go through, pursuant to your
3 investigation, how you learned this incident occurred.

4 A. In talking to the victim and witnesses, they walked up
5 Shanklin Road to the Food Lion. They would have entered from
6 this entry point here, which is closest to Pine Grove Road.
7 They were walking up this breezeway here. The video footage is
8 from right here, and it shoots right down this alleyway here,
9 right on the
10 outside of it, shoots down the alleyway. They were walking up
11 here. The vehicle pulled in and circled around and came around
12 and met them right here. And that's where the defendant exited
13 and approached the victim and the shots were fired, and then
14 they fled out this same way.

15 Q. And where was the shotgun wadding located?

16 A. If I remember right, it was right in here, right in
17 this area.

18 Q. Right about where the car was parked?

19 A. Yes.

20 Q. Or stopped?

21 A. Yes.

22 Q. Okay. All right. You can go have a seat. The State
23 would move Exhibit 27 into evidence.

24 THE COURT: Okay.

25 (State's Exhibit 27 is moved into evidence.)

1 BY MS. SWANSON:

2 Q. Did you get a description of the car that was in
3 question?

4 A. I did. One of the things I requested when I spoke to
5 the intelligence was a vehicle report for Ashley and for
6 Mr. Green at the residence. He described it as a green or gray
7 Crown Vic or Grand Marquis, which is what was -- which is what
8 was recovered, registered to Ashley Thomas, his girlfriend.

9 Q. I'm going to show you what's been entered as State's 4
10 and 5 and ask you if this is the car that was registered to
11 Ashley Thomas?

12 A. Yes, ma'am.

13 Q. You were able to recover surveillance video?

14 A. Yes.

15 Q. And did you review that surveillance video with Billy
16 Crumpton?

17 A. I did. I watched the video with Mr. Crumpton when we
18 were at -- I believe after we had made the arrest the following
19 day, I reviewed the video surveillance, yes, ma'am.

20 Q. And what you saw in the video surveillance, was that
21 consistent with the information that you gathered from both
22 Clifton Henry and Channon Preston?

23 A. Yes, ma'am. What I observed on the video is the
24 vehicle pulling up just as they had described to me. I observed
25 the individual get out of the passenger's side of the vehicle as

1 they had described, walk over to where they were at, walk
2 back -- and what you are talking about is just a matter of a few
3 feet. It's not huge distance. It's very short distance. Go
4 back to the vehicle, and what you can see is once he gets back
5 to the vehicle, he turns around again, and then gets back in the
6 vehicle and the vehicle flees, so, yes.

7 Q. Okay. Once you knew who was involved in this incident,
8 what did you do from there?

9 A. Once we positively identified Mr. Green as the
10 defendant in the case, I obtained the warrant that he's charged
11 with today. And we immediately started looking for him. One of
12 the first things that we did was we went to the residence at 69.
13 We didn't find anybody there. The car was not there. We didn't
14 make contact with anybody there. We talked to people in the
15 neighborhood
16 to see if they had seen him. Nobody had seen him.

17 We started hitting known locations where they might
18 have been. In other words, we went to family members' houses
19 looking for them. We went to friends' houses. We went to a bar
20 on Poppy Hill Road looking for them. We didn't find them. It
21 wasn't until the next morning that we got a call that he was
22 back at the house.

23 Q. So when you received that information, that was on
24 April 7th?

25 A. It was the following day, it was the morning of the

1 following day. The patrol was still -- the same patrol shift I
2 believe was still out from the previous day. One of the
3 patrolmen received a tip that he was back at the house. They
4 called me, and we immediately responded. We set a perimeter up
5 around the house and then tried to make contact.

6 Q. Okay. And what did you find when you got to the house?
7 Was the car there?

8 A. The car was there. We found the car was parked behind
9 the house. We approached the car. The car engine was still
10 warm. You could tell it had been -- just been driven. We
11 surrounded the house. And I started beating on the door, trying
12 to make contact with somebody in the house. It wasn't for about
13 15 or so minutes before Ashley Thomas answered the door.

14 Q. Okay. And eventually were you able to get Charles
15 Green outside the residence?

16 A. It took quite awhile, but, yes, he did come out of the
17 house. When he came out of the house, we immediately took him
18 into custody. And Ashley started to holler that: He didn't
19 start it, they shot at him first; was the first words out of her
20 mouth once we took him into custody.

21 Q. Once Mr. Green was taken into custody, where did you
22 take him?

23 A. We took him right back to the investigations office.
24 When we conduct an interview with somebody, we try to do it at
25 our office where it is controlled and it's recorded, there's no

1 outside influences.

2 Q. And did you Mirandize Mr. Green?

3 A. I did, I gave him his Miranda warning, yes, I did.

4 Q. And tell us how you do that.

5 A. When we give somebody their Miranda warning, especially
6 in the office, we use what's called a Miranda form. We have a
7 standardized sheet the Sheriff's Office uses. We go through it
8 one bullet point at a time with the person. Each time we give
9 them one section of their rights, we have them initial it,
10 stating that they understand it. And that's exactly what I did
11 in this case. I went through each of his Miranda rights with
12 him and I went through his waiver of rights with him as well.

13 Q. Okay. Did he request an attorney?

14 A. No, not that I recall, but he didn't make a statement
15 either.

16 Q. He did not make a statement?

17 A. No, he essentially said, I don't know nothing; is what
18 he said.

19 MS. SWANSON: Okay. Beg the Court's indulgence.

20 Please answer any questions that Ms. Campbell might
21 have for you.

22 THE WITNESS: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MS. CAMPBELL:

25 Q. Good afternoon.

1 A. Counselor.

2 Q. Officer Fraser, you've been with the Sheriff's
3 Department a good long while, right?

4 A. Yes, ma'am.

5 Q. You are a responsible officer, correct?

6 A. Yes, ma'am.

7 Q. You make every effort to generate investigations and
8 reports that are truthful and reliable, right?

9 A. Yes, ma'am.

10 Q. Okay. And I would believe that your reports are
11 accurate, right?

12 A. Yes, ma'am.

13 Q. You would tell us that your reports are accurate?

14 A. Yes, I would.

15 Q. You interviewed Clifton Henry personally twice, I
16 believe, correct?

17 A. Yes, ma'am, at the hospital and then again at his
18 house.

19 Q. The first interview was immediately after the
20 allegations came that he had been shot by Charles Green,
21 right?

22 A. I believe he hadn't even received any kind of treatment
23 at that point, we met him there so fast, yes.

24 Q. Okay, at the hospital?

25 A. Yes.

1 Q. And a few days later, after you had been investigating
2 this case, you went back to Clifton Henry to reinterview him,
3 correct?

4 A. Yes, ma'am. Generally, I find that at the time when
5 they are in the hospital, the pain is sometimes overwhelming.
6 So it's always good to go back and glean more information a
7 second time, once they are not in that pain and the shock really
8 from being shot wore off.

9 Q. Well, part of the reason you went back, if you are
10 investigating this case, is you had talked to other people,
11 witnesses, after you talked to him at the hospital, right? I
12 mean, the solicitor asked you if Channon Preston's statement
13 matched up to Mr. Henry's statement, right?

14 A. Yes, ma'am.

15 Q. Okay. And you told her it did match up, right?

16 A. Yes, ma'am.

17 Q. Okay. But isn't it true that Channon Preston, who you
18 can't find, who won't call you back, never told you that he also
19 picked up a \$20 bill, right? He completely took himself out of
20 it in all of his statements; they are all self-serving?

21 A. What I would say is, the primary interviewer for
22 Channon Preston was Sergeant Chapman and Investigator Zsamar. I
23 think when they interviewed Channon at the hospital, he mainly
24 told them about the shooting itself. I don't know that we asked
25 him anything specifically about Murray Drive prior to that,

1 because at the time I don't even think we knew about it.

2 Q. Okay. You were the lead investigator in this case,
3 right?

4 A. That's right.

5 Q. You take responsibility for your officers' actions, as
6 you said, you separate them into groups, you send them out, you
7 give them tasks to do, they report back to you?

8 A. That's right.

9 Q. So when Officer Zsamar interviews Channon Preston, and
10 he is only telling Officer Zsamar that a \$20 bill was laid down,
11 and that Clifton Henry is the only one who picks up the money,
12 you had that information, didn't you?

13 A. I would have to review Investigator Zsamar's report for
14 that specifically, but he may be referring --

15 Q. I'm talking about at the time. I'm talking about when
16 you were actively investigating this case. That officer would
17 have told you that information, wouldn't he?

18 A. Yes, sure.

19 Q. Okay. And so in actuality, Channon Preston's
20 statements don't match up to Clifton Henry's statements,
21 right?

22 A. It's kind of hard to judge perception, different
23 people's perception of the same thing. He may have been
24 referring to the \$20 bill that he picked up. I'm not sure.

25 MS. CAMPBELL: All right. Then may I approach the

1 witness and give him a copy of the report?

2 THE COURT: Right, but he didn't take that report.

3 MS. CAMPBELL: But as a lead investigator on it --

4 THE COURT: He -- lead investigator, we've got hearsay
5 on top of hearsay on top of hearsay which we are letting in, but
6 caveat, he didn't take it. So there you go.

7 MS. CAMPBELL: All right.

8 BY MS. CAMPBELL:

9 Q. You interviewed Ashley Thomas, correct?

10 A. I did, yes.

11 Q. And did her statement match up to what Clifton Henry
12 and Channon Preston were telling you?

13 A. No, not in totality. I think some of it did
14 prior to.

15 Q. And I'm sorry, you said when the solicitor was
16 questioning you that she said: He didn't start it, they shot at
17 him first; is that correct?

18 A. Yes, that's what she said, yes.

19 Q. When you went back to talk to Clifton Henry, you
20 questioned him about some pretty specific, I guess, allegations
21 that had been made against him by asking him if he had ever told
22 Channon Preston to go and get a gun on Murray Drive?

23 A. Yes, ma'am. Yes, ma'am.

24 Q. So you did have information that you were trying to
25 investigate and find out whether or not Channon Preston was

1 armed on Murray Drive, going after Charles Green, right?

2 A. Yes, ma'am.

3 Q. Okay. And you questioned him about taunting him,
4 Charles Green, with the gun, correct?

5 A. Yes, ma'am. And that was based off of his girlfriend's
6 statement, yes, ma'am.

7 Q. Right. And then in the first statement that
8 Mr. Clifton Henry gave to you, you were the one who took that
9 statement. And he's very clear about it, and your report is
10 very clear. He's telling you he walks over to the car and he is
11 shot by the car, right there at the car door, correct?

12 A. Again, that may be a matter of perception. He was only
13 feet away from the car the whole time to begin with. That may
14 have been a matter of perception because they are walking
15 towards the front of the store, and the car pulled up from the
16 entrance. So that he would have been walking towards the car
17 under that underhang as the car approached him. So, again,
18 that's kind of a matter of perception.

19 Q. Okay. And then in the second statement, he makes it
20 very clear, according to you, that he's hiding behind the
21 pillar. He was in the process of hiding behind the pillar when
22 the shot was fired, right?

23 A. Yes, yes.

24 Q. Okay. So he was not actually shot by Charles Green;
25 birdshot flew up and hit him, correct?

1 A. I'm sorry, what?

2 Q. You write in your report that Mr. Henry -- excuse me,
3 Mr. Clifton Henry was hit by some birdshot, right?

4 A. The shotgun blast, yes, ma'am.

5 Q. Right. You say he had wounds from birdshot from a
6 shotgun blast?

7 A. That would be a shotgun blast, yes, ma'am.

8 Q. Right. And according to Mr. Clifton Henry, that's when
9 he was hiding behind the pillar, in the second statement when
10 he, as you said, had time to think about it?

11 A. I would say that, again, it's a matter of perception.
12 As he's walking up to the store, he's passing several pillars.
13 As you can kind of see in that photograph there, there's pillars
14 as he's walking up beside it, and he's got to walk by them to
15 get into the store. And as they are approaching, I mean, he
16 could have been right there beside the pillar. I don't know.

17 Q. All right. Well, let's back up a little bit.
18 Mr. Clifton Henry, when I talked with him about whether or not
19 he and Channon Preston played cards at that table: Absolutely
20 not.

21 You don't do that, don't play cards? No.

22 In the second statement, when he talked with you, it's
23 very clear he lets you know that Channon called him to come over
24 to the house to do their little hustle, meaning playing cards,
25 right there for money?

1 A. Yes, that's what he said.

2 Q. And you put that in your report?

3 A. Uh-huh, that's what he said.

4 Q. And you are relying on this information, correct?

5 A. Yes, ma'am.

6 Q. And so you believe that they were there doing their
7 little hustle playing cards?

8 A. Together, yes, him and Channon, yes, they were.

9 Q. And just so we are clear, Channon or Shannon Preston is
10 a witness in this case that you have tried to find, and you
11 cannot find him, correct?

12 A. That's right. That's right.

13 Q. You have a phone number for this person, correct?

14 A. Yes, ma'am.

15 Q. And you've called that number and they are not
16 returning your phone calls, right?

17 A. That's correct.

18 Q. Did you ever have any information from Channon that he
19 took money from Charles Green?

20 A. I don't know that I did.

21 MS. CAMPBELL: That's all I have.

22 REDIRECT EXAMINATION

23 BY MS. SWANSON:

24 Q. Investigator Fraser, did you find any evidence
25 throughout this investigation that corroborated Ashley Thomas's

1 statement: They started it, they shot at him first?

2 A. No. And that's actually why we went back to the house
3 and talked to the grandmother. We looked all through the yard.
4 There was no evidence of any kind of altercation. It was a dirt
5 yard, if I remember right, so you would have seen where an
6 altercation took place.

7 MS. SWANSON: Thank you.

8 CROSS-EXAMINATION

9 BY MS. CAMPBELL:

10 Q. Isn't it true, Officer, that you made a notation in the
11 reports that that yard had been raked up after this happened?

12 A. I believe it was raked up prior to it, yes.

13 Q. Well, in the report, it indicates it had been raked up
14 after this; would that be correct?

15 A. If that's what I wrote in the report.

16 MS. CAMPBELL: That's all I have.

17 THE COURT: All right. You can step down.

18 THE WITNESS: Thank you, Judge.

19 (Whereupon the witness is excused.)

20 MS. SWANSON: State calls Lasandra Young.

21 THE COURT: Okay.

22 LASANDRA YOUNG,

23 having been duly sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MS. SWANSON:

1 Q. Ms. Young, who do you work for?

2 A. Beaufort County Clerk of Court's office.

3 Q. And what position do you hold with the clerk's
4 office?

5 A. Judicial clerk.

6 Q. And what are your duties as the judicial clerk?

7 A. We intake all of the indictments, warrants and all of
8 the documents pertaining to the warrants and the indictments.

9 Q. Okay. And so do you keep indictments and sentencing
10 sheets and things of that nature in the course of regular
11 business?

12 A. Yes, we do.

13 Q. Okay. I'm going to hand you what's been marked as
14 State's Exhibit 25 and ask for you to identify this document,
15 please, or these documents. They are two stapled together.

16 A. Sure. The first sheet is the sentencing sheet of
17 Charles Green. And the second sheet is the indictment.

18 Q. Okay. And are those -- is that a certified copy --

19 A. Yes, it is.

20 Q. -- of the sentencing sheet and indictment?

21 A. Yes, it is.

22 MS. SWANSON: Your Honor, at this time the State would
23 move 25 into evidence.

24 MS. CAMPBELL: No objection.

25 THE COURT: Okay.

1 (State's Exhibit 25 is moved into evidence.)

2 MS. SWANSON: I would ask at this time that you take
3 judicial notice, Your Honor, that this is a sentencing sheet for
4 trafficking in cocaine, which is classified as a violent crime
5 under 16-160.

6 THE COURT: Okay.

7 MS. SWANSON: Thank you, Ms. Young. I have nothing
8 further.

9 (Whereupon the witness is excused.)

10 MS. SWANSON: Thank you, Your Honor. That concludes
11 the State's case. The State rests.

12 THE COURT: Okay. Y'all step up. Okay, jurors, I
13 don't want y'all clapping and shouting. We are going to break
14 for the day. Bottom line, we couldn't finish it today anyway.
15 My policy is don't send them out to the jury before their time,
16 and their time is before four o'clock; otherwise, you are here
17 all night. So don't talk about the case. Be back in the
18 morning. We will start at 9:30. We will conclude tomorrow, no
19 problem.

20 (Whereupon, the jury leaves open court at 02:24 p.m.)

21 THE COURT: Okay. Jury is clear.

22 MS. CAMPBELL: Your Honor, if you could give me one
23 second, if you would like, I can proceed to make my directed
24 verdict motions on behalf of my client at this time.

25 THE COURT: All right.

1 MS. CAMPBELL: And I have some boards that I have used
2 previously in attempted murder trials, and I'm going to use them
3 today as I make my directed verdict motion. It helps to keep me
4 organized and I think it will be helpful for us.

5 Mr. Green is charged with attempted murder, as Your
6 Honor is aware. The State has the burden of proof that there
7 was an intention to kill with expressed or implied malice. I
8 think the testimony thus far, the State has failed to meet their
9 burden of proof.

10 The testimony has been that Mr. Clifton Henry was
11 behind a pillar, that he was hit with some birdshot.

12 THE COURT: That's not the testimony. Don't misquote.
13 I listened to what the guy said. He said he was by the pillar,
14 and when he saw him with the gun, he got a little further behind
15 it. He was not hiding behind the pillar under his sworn
16 testimony from the stand. Now, that might be a position you
17 could argue to the jury, but that's not evidence in the case.

18 MS. CAMPBELL: I understand that's what Clifton Henry
19 testified to.

20 THE COURT: All right.

21 MS. CAMPBELL: But he has made prior statements in the
22 process of this investigation that indicated two different
23 versions of where he was when he was hit with the birdshot.
24 That's all I'm saying.

25 THE COURT: Even that is jury argument. The officer

1 just testified, said by the car and by the pillar. We are
2 talking a very small distance, matter of perception from his
3 viewpoint. That's jury argument. You can argue that he made
4 inconsistent statements. But Ms. Swanson can argue that the
5 State is absolutely consistent, and it's up to the jury.

6 MS. CAMPBELL: In addition, Your Honor, Mr. Henry never
7 testified that Charles aimed the gun at him, that he was
8 pointing the gun at him when the blast went off. There's been
9 absolutely no testimony whatsoever how the gun was shot. It's
10 not even clear by a lack of testimony that the gun was shot even
11 in his direction, because he was only hit by the pellets. And
12 we don't even know how that happened. And so I would say the
13 State has failed to meet their burden of proof, because there's
14 been no testimony that the gun was actually shot at him.

15 THE COURT: We talked about inferences, you know. That
16 he got hit, they can infer he was shot at. That's all.

17 MS. CAMPBELL: So, again, Your Honor, I would make a
18 motion for directed verdict on the attempted murder charge at
19 this time, that the State has failed to meet their burden of
20 proof at this point. We would assert that with the lack of
21 testimony that Mr. Green was shooting the gun at him, would fail
22 to meet the intent to kill burden.

23 THE COURT: Well, he's the only one hit of the two
24 people there, shotgun scatters.

25 MS. SWANSON: Do you need me to respond, Your Honor?

1 THE COURT: What else? I mean, it's a weak attempted
2 murder case because they don't have any blood or anything like
3 that. Testimony from the doctor was he could have been killed
4 if the shells had hit.

5 MS. CAMPBELL: Well, I mean, obviously, Your Honor, I
6 went through the statutory requirements with the doctor.

7 THE COURT: I've listened carefully to you. Okay.
8 What else?

9 MS. SWANSON: Judge, I would just state briefly that
10 malice can be from use of a deadly weapon. Shotgun can be a
11 deadly weapon. And that Mr. Green's actions, taken in the light
12 most favorable to the State, also showed a reckless disregard
13 for the lives and safety of others.

14 THE COURT: Okay. Well, we no longer charge, can be
15 inferred from use of a deadly weapon. You can argue, but we
16 don't charge. Surrounding circumstances is all we say.

17 Anything else I can help y'all with?

18 MS. CAMPBELL: Not from the defense at this time, Your
19 Honor.

20 THE COURT: All right. Well, you need to talk it over
21 with Mr. Green tonight as to whether he's going to testify, put
22 up a defense. And if he won't be, if he doesn't testify, I
23 would say I would instruct the jury they couldn't consider his
24 failure to testify on the issue of whether he committed this
25 crime.

1 MS. CAMPBELL: Yes, sir. I've spoken with Mr. Green
2 about that. And would Your Honor like to receive his answer and
3 advisement again in the morning before we proceed?

4 THE COURT: Right. He's got all night to think about
5 it, because you haven't rested yet. You just do that in the
6 morning if you want to.

7 MS. CAMPBELL: Yes, sir, okay.

8 THE COURT: Of course, he's not a legal scholar, but
9 there are other reasons for not testifying, as you have covered
10 with him, like you don't have to --

11 MS. CAMPBELL: Right. And I have gone through
12 everything with him that I believe would benefit him.

13 THE COURT: You can close if you haven't put in any
14 evidence.

15 MS. CAMPBELL: Right. I discussed that with him.

16 THE COURT: Which some say is a tactical advantage but
17 that's for you to decide.

18 MS. CAMPBELL: All right. Your Honor, in the
19 anticipation that should Mr. Green not testify and we would be
20 moving forward then at that time to closing and charging the
21 jury, would you like to take up my request at this time for
22 lesser-included offenses to be charged to the jury?

23 THE COURT: Which ones do you all think should be
24 charged?

25 MS. SWANSON: I would agree that there has been

1 evidence that the jury could find for assault and battery of a
2 high and aggravated nature.

3 MS. CAMPBELL: And I would assert to the Court that
4 actually, as the doctor answered my questions, he was unable to
5 provide sufficient testimony to equate it to assault and battery
6 of a high and aggravated nature, that he answered in the
7 negative on great bodily injury.

8 And as far as the act was accomplished by means likely
9 to produce death or great bodily injury, again, factually,
10 there's been no evidence that the shot was directed at
11 Mr. Green.

12 So we would object to the lesser-included of ABHAN. We
13 would also say that assault and battery first degree is not
14 appropriate in that there was not a robbery, burglary,
15 kidnapping or theft taking place.

16 But we would ask that the Court charge on assault and
17 battery in the second degree, which is actually what the doctor
18 testified to, which was moderate bodily injury. And so we would
19 request a charge on assault and battery in the second degree in
20 addition to the attempted murder charge.

21 THE COURT: Well, this is what you get. You get
22 attempted murder, assault and battery of a high, and then you
23 got the second degree.

24 MS. CAMPBELL: Thank you, Your Honor.

25 THE COURT: Based on how a jury could interpret what

1 the doctor testified to, because they could also interpret great
2 bodily injury if he gets an artery under her questions, and your
3 question, no, so --

4 MS. CAMPBELL: All right. Thank you, Your Honor. I
5 will prepare my charges with that in mind.

6 THE COURT: All right. I need somebody to bring the
7 new and improved statutes on assault and battery second, just
8 the statutes.

9 MS. CAMPBELL: I will be happy to do that. Thank you,
10 Your Honor.

11 MS. SWANSON: So we are going to take care of the
12 verdict form if Ms. Campbell takes care of the statutes. Does
13 that sound --

14 MS. CAMPBELL: I will take care of that.

15 THE COURT: I will consider any requested charges you
16 have.

17 MS. CAMPBELL: And I will just review my request to
18 charge --

19 THE COURT: Y'all need to be in here at 9:15. Won't
20 take me but a second to read.

21 MS. SWANSON: Yes, sir.

22 THE COURT: So you will know what we are going to
23 charge before we start summing up.

24 MS. CAMPBELL: Thank you, Your Honor.

25 THE COURT: All right.

1 (Whereupon, proceedings end for the day.)

2 (Whereupon, proceedings continue on December 20, 2013.)

3 MS. SWANSON: Your Honor, I have not shown the verdict
4 form to Ms. Campbell, but if I can just bring it up and make
5 sure it meets your approval.

6 THE COURT: All right. No problem. You don't have a
7 place for the foreperson to sign on the first two.

8 You talked with your client?

9 MS. CAMPBELL: Yes, sir, I talked with Mr. Green, and
10 Mr. Green has made the decision that he
11 will not be testifying.

12 THE COURT: Okay. Mr. Green, that's your decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Of course, you thought about it and
15 discussed it with your attorney and so forth?

16 THE DEFENDANT: Yes.

17 THE COURT: Does the defense intend to put up any
18 additional evidence?

19 MS. CAMPBELL: The defense would not have any witnesses
20 to call and no evidence to introduce. And based upon that, we
21 would ask for the benefit of the last argument in the case.

22 THE COURT: All right.

23 MS. CAMPBELL: I can rest now.

24 THE COURT: You need to rest in front of the jury.

25 MS. CAMPBELL: Right, but for the record, for

1 expeditious matters, I can rest now on the record and then I
2 will rest in front of the jury. So, the defense rests.

3 At this time then, we would renew our motions for
4 directed verdict on the same basis as before.

5 THE COURT: Right.

6 MS. CAMPBELL: And, Your Honor, we would also be asking
7 that Your Honor consider a charge to the jury on self-defense.

8 THE COURT: No evidence of it.

9 MS. CAMPBELL: And I believe that the evidence from the
10 State's case was that Ashley Thomas indicated that they shot at
11 him first. And there's been no testimony whatsoever if that
12 shot took place at the Food Lion --

13 THE COURT: You can get it reversed, but there's no
14 evidence, no direct testimony of it. And it's hearsay on
15 hearsay. No bullet markings, he had no guns on him. They took
16 him straight there. Forget it.

17 MS. CAMPBELL: Thank you. For the benefit of my
18 client, I wanted to make it clear on the record that I was
19 requesting the self-defense instruction when we believe that the
20 testimony is that they shot at him first, and there's been no
21 testimony whatsoever to say that they were not armed and
22 shooting at him at the Food Lion.

23 THE COURT: The guy -- the victim testified he was not
24 armed and did not shoot. I mean, you can't tell me with a
25 straight face, tell me there's no testimony it didn't occur.

1 There's no testimony that it did.

2 MS. CAMPBELL: I don't think he was ever asked if he
3 was shot at.

4 MS. SWANSON: He was asked if he was armed at all.

5 MS. CAMPBELL: Okay. Thank you, Your Honor.

6 THE COURT: He said he didn't even have a gun when he
7 committed the armed robbery.

8 MS. CAMPBELL: This is true. I've just been handed the
9 verdict form, if I could take a moment.

10 THE COURT: You can do it.

11 MS. CAMPBELL: May it please the Court. Upon review of
12 the verdict forms prepared by the State of South Carolina, as to
13 Page 1, I do not have any issues with Page 1. However, with
14 Page 2, I think that if the jury does not find him guilty of the
15 attempted murder, then they would have to find him not guilty of
16 the second charge. That needs to be clear.

17 THE COURT: I will tell them that.

18 MS. SWANSON: But also, assault and battery of a high
19 and aggravated nature is now a violent crime, so it would
20 definitely be a --

21 MS. CAMPBELL: Right. So A and B second, if they find
22 him guilty of that, then this is --

23 THE COURT: But I have to explain that. We are going
24 to write all that on the verdict form.

25 MS. CAMPBELL: Okay. And then the request --

1 THE COURT: Assault and battery of a high and
2 aggravated nature is all in one, is final. I mean, second
3 degree is not.

4 MS. CAMPBELL: Right. So the attempted murder and
5 ABHAN is now violent as it was under -- yeah, right. And with
6 that, I would have no issues with the verdict forms.

7 THE COURT: Okay.

8 MS. CAMPBELL: Should I return them to the Court?

9 THE COURT: Yeah, I don't have them.

10 And the State has checked over all the exhibits that
11 you introduced?

12 MS. SWANSON: Yes, sir.

13 THE COURT: Of course, y'all know I really don't read
14 verdicts -- I mean, I don't read charges, I just charge. But I
15 did have the statute up here on assault and battery, which is
16 why I asked for that. And I don't use those Ralph King Anderson
17 stuff that juries don't understand, like clothed in a cloak of
18 righteousness since the beginning of -- you know, they think you
19 are crazy when you talk like that.

20 MS. SWANSON: I just sent that book back because it
21 does have the language of the statute.

22 THE COURT: I'm only saying that --

23 MS. SWANSON: Yes, sir, I understand.

24 THE COURT: Ms. Campbell has some in her charges too.

25 MS. SWANSON: Right.

1 MS. CAMPBELL: And for the record, Your Honor, the jury
2 charges that the defendant requested, Your Honor, we will be
3 charging those to the jury.

4 THE COURT: The sense of them, I'm not going to charge
5 on and on and on and on.

6 MS. CAMPBELL: Mr. Green would request that you charge
7 them as submitted to the Court.

8 THE COURT: I'm not charging them as submitted to the
9 Court. I am charging the law that encompasses what you said.
10 26 years I've been reversed on one jury charge, and that was
11 crazy. It was a drug charge on active and constructive
12 possession, where the guy dropped the drugs, you know. And I
13 didn't say -- you know, you got to tell them what actual
14 possession is and constructive. So that was confusing to the
15 jury. That was in the opening statements. And I don't even
16 know what the case was about, like this, but anyway --

17 MS. CAMPBELL: Thank you, Your Honor. And just to
18 protect my client then, if I could just make the defendant's
19 requested jury instructions a packet and mark them --

20 THE COURT: They are marked.

21 MS. CAMPBELL: -- for the inclusion of the case.
22 Excuse me one moment.

23 THE COURT: Ms. Campbell, even the statute, well, it's
24 not applicable, like the act involving a nonconsensual touching
25 of the private parts of the person. That doesn't have anything

1 to do here.

2 All right. Y'all ready?

3 MS. SWANSON: Yes, sir.

4 MS. CAMPBELL: Yes, sir.

5 (Whereupon, the jury returns to open court at 09:37
6 a.m.)

7 THE COURT: You may proceed.

8 MS. CAMPBELL: Your Honor, at this time the defense
9 rests.

10 THE COURT: Okay. Jurors, when the defense rests, that
11 means that's all the evidence that's going to be presented
12 during the trial. Now, obviously, the defendant has not
13 testified. Remember I told you at the start there's no
14 obligation on the part of the defendant to prove he's not guilty
15 or innocent. The entire burden is on the State. And they must
16 convince you beyond a reasonable doubt that he committed a crime
17 embraced within some of the indictments submitted to you before
18 you can find him guilty of anything. The fact that he didn't
19 testify, he has a constitutional right not to testify, you know.
20 And when he exercises his constitutional right, you can't even
21 take that into consideration on the issue of whether the State
22 has met
23 its burden of proof beyond a reasonable doubt. And when you
24 deliberate, you don't even discuss that fact that he didn't
25 testify when you are reaching your decision.

1 You have to decide the case based upon the admitted
2 evidence. You can't speculate as to good reasons for
3 testifying, good reasons for not, you know. One tactical
4 advantage, if you don't put up any evidence, you get to sum up
5 last; otherwise, the State gets to open and close. It's just a
6 factor. Okay. You may proceed.

7 MS. SWANSON: Thank you, Your Honor. May it please the
8 Court. This is going to be the last chance that I have to speak
9 to you guys. Ms. Campbell is going to get the last word in this
10 case, so I need to make sure that I wrap everything up and give
11 it to you in a clear manner. I want to talk about the facts and
12 then the law, because it's going to be your job to determine
13 what the facts of this case are and then apply them to the law
14 that Judge Kinard charges you with.

15 Let's start by talking about Clifton. Clifton is a man
16 with a past, in his late 40s. He struggled with a drug problem
17 and had some convictions over 10 years ago. The fact that
18 Clifton has this past does not change the fact that Charles
19 Green shot him without any legal provocation, with no legal
20 defense.

21 You heard Clifton testify. He was unarmed. There was
22 no exchange of gunfire. Even back at Murray Drive, there was no
23 evidence of any altercation.

24 Clifton told the nurse what happened when he got to the
25 ER. When he was wounded by the shotgun blast, he told the nurse

1 what happened. The nurse conveyed it to the 911 operator.
2 Clifton also told Investigator Fraser what happened, told
3 Investigator Fraser what happened twice, in fact. And then he
4 told you what happened. Every time he told people what happened
5 that day, it was consistent.

6 Sure, there's some minor inconsistencies. That's going
7 to happen when an event took place two and a half years ago.
8 Minor inconsistencies, we are talking about a few dollars and a
9 few feet. That may be inconsistent. In the grand scheme of
10 things, does that mean his whole statement is inconsistent? No.
11 It is consistent. He wasn't coached. He didn't go back over
12 every statement that he gave law enforcement.

13 He has never had a problem with CJ. He knew him for
14 about six to eight months. They were previously neighbors on
15 Murray Drive. They didn't have any altercation. He didn't see
16 this coming. He has no reason to make up this story that
17 Charles Green shot him. He didn't make this up. Clearly he was
18 shot. The
19 evidence of that is still imbedded in his arm and his leg.

20 This was an act of senseless violence by Charles Green.
21 Yes, we wonder what maybe set him off. We don't know. We do
22 know that Channon and Clifton had had a conversation with him at
23 Murray Drive earlier. Charles Green was saying, oh, he blew a
24 bunch of money the night before. And then he says, here, you
25 broke-ass so-and-so's, take these \$20. Okay. So they take it

1 and they go up to the Food Lion to spend it. He goes there. He
2 wants the money back.

3 Well, in the meantime, who has he been with? He's been
4 with his girlfriend, Ashley Thomas. Do you think maybe she
5 could have been upset that he was broke, that he didn't have any
6 money? Do you think maybe they could have had an argument and
7 he didn't feel like much of a man after she let him have it?

8 When Clifton testified, he testified that Charles Green
9 had tears in his eyes. Doesn't that seem weird? He had to show
10 what a man he was by taking out that shotgun and unloading on
11 Clifton Henry, unloading on Clifton Henry in front of a bustling
12 grocery store, Clifton, standing in front of a row of propane
13 tanks situated next to a daycare.

14 Again, this is a theory of the motive in this case. We
15 don't have to prove motive, but it does make sense. While we
16 don't know exactly why Charles Green shot Clifton, we know he
17 was shot. And what could Clifton possibly have to gain by
18 making this up? He was 100 percent sure who shot him. He
19 circled the number two position in this photo lineup that
20 Investigator Fraser showed to him. He circled him right away,
21 not a doubt in his mind.

22 I want to take another look at the videotape. Now,
23 this videotape is in evidence. That means that you can watch it
24 as many times as you would like. Okay? It's a little difficult
25 to see because what you are looking for takes place in this

1 upper left corner.

2 What we are looking for, as Investigator Fraser
3 explained and Clifton Henry explained on the stand, is the Grand
4 Marquis to come pulling up, stopping next to where Clifton Henry
5 and Channon Preston were standing. Clifton is standing by a
6 pillar. Mr. Green gets out of the car, goes and asks for his
7 money back, walks back to the car, grabs the shotgun, and
8 there's a blast.

9 The Grand Marquis comes pulling up. Ashley Thomas, his
10 girlfriend's driving, Charles Green in the passenger's seat,
11 double-barrel sawed-off shotgun in the floorboard of that Grand
12 Marquis that he went back and grabbed.

13 (Video played.)

14 Everything that you see in that videotape corroborates
15 Clifton Henry's statements. Everything that you see
16 corroborates the physical evidence that Investigator Fraser and
17 the other investigators collected. The shotgun waddings, there
18 were two of them. Right here. They were collected.

19 A shotgun was fired in the parking lot of Food Lion.
20 Shotgun was fired in the parking lot of Food Lion by Charles
21 Green who was 100 percent identified. He was driven there in
22 Ashley Thomas's car, his girlfriend.

23 More still shots of the car. Remember, Ashley Thomas
24 makes a statement when Charles Green gets arrested. She says:
25 They started it; they shot at him first.

1 She tries to minimize his role and make Channon and
2 Clifton the guilty parties. But, really, she's making Charles
3 Green the shooter in this case. She identifies him. His own
4 girlfriend identifies him as the guy who shot Clifton Henry.
5 Ashley wasn't around when CJ and Channon and Clifton were
6 sitting at that table on Murray Drive. She was inside when they
7 had their little exchange about how he blew this money, blah,
8 blah, blah. She was inside. She doesn't know what happened
9 there.

10 Investigator Fraser and Investigator Zsamar went to
11 Murray Drive to see if there was any sign of altercation. There
12 wasn't. There's simply no evidence at all that they started
13 anything.

14 Now, we have to talk about the law a little bit in this
15 case. There are a number of different charges that Judge Kinard
16 is going to charge you on. Attempted murder has lesser-included
17 charges that you can consider if you believe that the facts meet
18 the elements of those statutes.

19 Attempted murder is the attempt to kill another person
20 with malice aforethought. Now, you may be wondering what in the
21 world is malice aforethought. Malice aforethought is an evil
22 intent, an evil intent or an ill will towards another human
23 being. It can be expressed or it can be inferred. It can be
24 expressed through words or actions.

25 Do you remember the words that Clifton Henry said

1 Charles Green said? He said something to the effect of, after
2 he gets his money back with the tears in his eyes, goes back to
3 his car, grabs the shotgun, he says something to the effect:
4 Well, that will teach you so-and-so's to laugh at me, or
5 something like that. He knew what he was doing. He absolutely
6 knew what he was doing, and he wanted to teach them a lesson and
7 he wanted to act tough in front of his girlfriend.

8 You can also infer malice from all of the surrounding
9 circumstances. Use of a deadly weapon, the reckless disregard
10 for the safety of others in this shopping center, the words that
11 he spoke. These are all things that you can consider when you
12 determine whether or not there was an evil intent here.

13 Malice existed when Charles Green loaded that sawed-off
14 shotgun, put it in his girlfriend's car, and they decided to go
15 confront Channon and Clifton. Malice and evil intent existed
16 when Charles Green went back to the Grand Marquis and grabbed
17 that double-barreled sawed-off shotgun. Malice and evil intent
18 existed when
19 Charles Green pulled that trigger. Malice and evil intent can
20 even exist moments before the act occurs. Moments when he
21 pulled that trigger, there is no question he knew what he wanted
22 to do.

23 Clifton got lucky. Clifton had quick reflexes.
24 Clifton was standing by a pillar. Clifton ducked behind the
25 pillar when he saw that shotgun come out. Well, lucky for him,

1 because he would have been hit in the chest. He was hit on the
2 left side and in the left leg.

3 This was no accident. This was not an accident.
4 Charles Green didn't accidentally go back to the car and grab
5 the sawed-off shotgun and shoot Clifton.

6 What did Dr. Rehman say? Anytime you shoot someone,
7 you shoot to kill. There is no way that Charles Green knew that
8 he would only maim Clifton Henry. There's no way. It's a
9 shotgun blast. There's not a shot, an entry and exit wound.
10 There's a blast. There's a number of projectiles that cover a
11 wide area. He had no idea that wasn't going to hit or nick a
12 major organ or an artery causing Clifton to bleed out and
13 causing his demise. Dr. Rehman said, yes, of course a shotgun
14 can kill you. I think we all know that. That's common sense.
15 If you just want to hurt someone, you might use a 2 x 4. You
16 might use a bottle; I don't know, a knife. You don't shoot at
17 someone.

18 Had Clifton not been so quick to react, we could be
19 hearing a murder case. But lucky for Clifton, he was quick to
20 react and we are not hearing a murder case. Because of his
21 quick reflexes, that does not give Charles Green a pass. He
22 doesn't get a pass because he was able to get behind the pillar
23 in time so that it didn't nick a
24 major artery or a major organ.

25 Keep in mind that we are talking about an attempt here.

1 Okay? Clearly, he did not succeed in killing him, but that
2 doesn't mean the intent to do that harm was not intended.
3 Clearly, the State believes that attempted murder fits the facts
4 of this case.

5 Okay. I do want to talk briefly about the other
6 options that you are going to have when Judge Kinard charges you
7 on the law. Ms. Campbell is going to argue those to you as
8 well, and I just want to make sure that you don't get confused
9 by a twist of words, that you maintain your common sense and
10 maintain your collective intelligence.

11 Let's talk about assault and battery of a high and
12 aggravated nature. Ms. Campbell is going to tell you that there
13 was no great bodily injury for an assault and battery of a high
14 and aggravated nature. Well, there doesn't have to be great
15 bodily injury, and there doesn't have to be great bodily injury
16 for attempted murder. What differentiates the two is the intent
17 behind it.

18 For an assault and battery of a high and aggravated
19 nature, the unlawful injury can be accomplished by means likely
20 to produce death or great bodily injury, like shooting someone
21 with a firearm. What ABHAN does not require is malice
22 aforethought, the evil intent or the ill will, the reckless
23 disregard for the safety of others. That is not an element of
24 ABHAN. That's what we call it, ABHAN, assault and battery of a
25 high and aggravated nature.

1 Now, both assault and battery of a high and aggravated
2 nature and attempted murder are classified as violent crimes.
3 If you believe he is guilty of one of these crimes and you
4 believe that he had the sawed-off shotgun, then he would be
5 guilty of possessing a weapon during a violent crime.

6 The other option that you are going to be presented
7 with is assault and battery second degree. This statute
8 addresses a situation where someone injures or attempts to
9 injure another person and moderate bodily injury occurs.

10 It does not even require an injury. It could be an
11 attempt that doesn't even require an injury, but that could have
12 resulted in a moderate bodily injury. Now, do you think someone
13 shooting a shotgun at someone else fairly close in range intends
14 to create a moderate bodily injury? No. No. That's a
15 ridiculous presumption.

16 If you believe the testimony that you heard here
17 yesterday, you must find Charles Green guilty of attempted
18 murder. This case has both expressed and inferred malice
19 aforethought.

20 There is a third indictment in this case as well, one
21 that Charles Green has a conviction for trafficking in cocaine
22 more than 10 grams, less than 28 grams. This is his sentencing
23 sheet. It shows that he pled guilty on March 16th of 2007, and
24 he was sentenced to five years. This occurred in April of 2011.
25 So when he got released early from his five-year sentence, he

1 was, what, mere months, and he's back out on the street toting a
2 sawed-off shotgun to the Food Lion Shopping Center and shooting
3 in front of a grocery store and a daycare. Trafficking in
4 cocaine is a violent offense. He is not allowed to possess a
5 firearm.

6 I think y'all realize that this case is about more than
7 Clifton Henry and his injuries. This is about gunfire in the
8 middle of the afternoon on a Wednesday. This is about gunfire
9 at a local shopping center that housed a daycare, a grocery
10 store and a restaurant, shotgun spray that narrowly misses a
11 string of propane tanks.

12 We cannot allow Charles Green to open fire at the Food
13 Lion in Laurel Bay and not face any consequences for his actions
14 and decisions that day. We cannot allow Charles Green to get
15 away with a senseless act of violence. I'm asking you to find
16 him responsible, to find him responsible and find him guilty of
17 the attempted murder and the two weapons charges. Thank you.

18 MS. CAMPBELL: May it please the Court.

19 THE COURT: Sure.

20 MS. CAMPBELL: I need to approach with the solicitor
21 please.

22 THE COURT: All right. Jurors, don't talk about the
23 case. Just step out. Unfortunately, anytime you step out, it's
24 now 13 minutes.

25 (Whereupon, the jury leaves open court at 10:02 a.m.)

1 THE COURT: Okay.

2 MS. CAMPBELL: May it please the Court, Your Honor.

3 THE COURT: Sure.

4 MS. SWANSON: During the State's closing argument, the
5 Solicitor said in reference to my client, commenting about his
6 actions in this case, that he had put forth no legal defense.
7 And that's a comment on the defendant's right to remain silent
8 and it shifts the burden of proof to the defendant, and that is
9 simply not allowed. And we would ask for a mistrial at this
10 point.

11 Additionally, the second basis for the mistrial is the
12 Solicitor said, Ms. Campbell will get up here and talk to you
13 and don't be confused or get confused by a twist of her words or
14 a twist of words, indicating that I would mislead the jury. We
15 would ask for a mistrial at this time, Your Honor. Thank you.

16 MS. SWANSON: Thank you, Your Honor. I did not say
17 that Mr. Green did not put up any legal defense. I said Charles
18 Green shot him with no legal provocation. There is no legal
19 defense here, which is -- he's not going to get a charge for
20 self-defense, even though Ms. Campbell is going to possibly
21 argue it. And I think I can argue if she twist words or has
22 another
23 interpretation of something, don't get confused by that.

24 THE COURT: Yeah, I didn't pick up on it that there was
25 any indication of burden shifting, but I'm certainly going to

1 instruct them, but he's got no burden at all.

2 MS. CAMPBELL: Your Honor, I would be happy for the
3 court reporter to read it back, but it's clear to me that she
4 said -- the Solicitor said that Mr. Green had presented no legal
5 defense, and that's a shifting of the burden.

6 THE COURT: Doesn't rise to a mistrial. I'm going to
7 tell them he has no burden.

8 MS. SWANSON: It's still my position that that's not
9 how it was worded.

10 THE COURT: Well, we could play that back if she can
11 find it, but you did not say he did not present a legal defense.
12 You were just commenting on the facts as presented.

13 (Whereupon, the court reporter displays the testimony
14 for the Court):

15 THE COURT: "The fact that Charles Green shot him
16 without any legal provocation, with no legal defense."

17 She didn't shift any burden.

18 MS. CAMPBELL: The defendant's position is that
19 it did.

20 THE COURT: You have to be an attorney to even think
21 that, I think. But anyway, since we sent them out, we've got
22 another seven minutes.

23 MS. CAMPBELL: Thank you, Your Honor.

24 (A recess transpired.)

25 THE COURT: If the jury is ready, we are ready.

1 (Whereupon, the jury returns to open court at 10:14
2 a.m.)

3 THE COURT: You may proceed.

4 MS. CAMPBELL: Thank you, Your Honor. Good morning.
5 You know, there are some bedrock principles in what I think all
6 of us would agree is the sacred nature of this room. This is a
7 place of justice. This is a place where verdicts should speak
8 the truth. And by being selected as jurors in this case, in
9 this man's trial, you are now part of the concrete foundations
10 of this courthouse and of this courtroom and of our system of
11 justice, and you will leave your mark. You will leave your
12 imprint on these proceedings and on all of us, particularly
13 Mr. Green.

14 I am sure, I'm confident that you respect these bedrock
15 principles, the foundations by which all of us live, every
16 single one of us. And I'm confident that you will hold true to
17 the law and be true and care and take care of the duties that
18 you have to these principles that I'm about to talk to you
19 about. The first and most important principle that any of us
20 can live by in this country is that all men, all women, are
21 presumed innocent. And that's just not words. That is the
22 foundation upon which we stand here today.

23 Charles Green is presumed innocent of the charges
24 against him. You know, there's an old judge that used to give a
25 charge, and it's good law, I'm not sure if Judge Kinard will say

1 these words, but this is the way he used to describe it. When a
2 man is accused by the government, the far-reaching, powerful
3 government, he sits cloaked in a robe of innocence, of
4 righteousness. And that cloak of innocence all of us wear
5 should we sit where Charles Green sits. That robe, that cloak
6 cannot -- can never be removed, not during your deliberations.
7 It remains with him, all of us, should we be in that situation.
8 The only manner in which that can be removed is if all 12 of
9 you, each individual one of you, makes a decision to strip him
10 of that robe.

11 The second principle is that no man or woman must prove
12 that they are not guilty. For how would a man or a woman do
13 that? You can't do that. You can't prove yourself innocent.
14 And we don't require that you do that when you are here.

15 The third principle is that the State of South
16 Carolina, the government, has the burden of proof, proof of
17 guilt beyond reasonable doubt. Again, the judge that I referred
18 to earlier, reasonable doubt is the kind of doubt that would
19 cause a reasonable person to hesitate to act. And I'm going to
20 get into that in just a minute.

21 The fourth principle that I'm going to ask you to
22 remember during your deliberations is that you, and you alone as
23 individuals, are the sole judges of the credibility of the
24 witnesses. I don't take issue with the officers' testimony in
25 this case. I do take issue with Mr. Henry's testimony. So

1 let's talk about that a little bit.

2 You can completely disregard what Clifton Henry told
3 you. You have that option, absolutely. He is an admitted and
4 convicted car thief, robber, forger. And his truthfulness and
5 his credibility rests in your hands this day. And I believe
6 that he is not trustworthy, but I can't tell you to believe
7 that. You must come to that belief on your own.

8 If you believe he's trustworthy and you think he's the
9 kind of man that you could place your faith in and say to
10 yourself, if Clifton Henry built me a bridge between the
11 mountain of innocence and the mountain of guilt, and there's a
12 cavern there, certain death should the bridge not hold, can I
13 step out onto a bridge that Clifton Henry built for me? And if
14 you hesitate to step on that bridge, that's reasonable doubt.
15 That's not guilty. Then put your children on that bridge,
16 reasonable doubt, if Clifton Henry built you that bridge.

17 Now, let's look at what he did tell you. The most
18 ludicrous story ever. He says -- oh, he's told it several
19 different ways too. First he tells the nurse at Beaufort
20 Memorial that Charles Green just gave him a \$100 bill, which he
21 gave back to him. Then he tells Officer Fraser Charles Green
22 gave him and Channon Preston a \$20 bill each. And, you know,
23 Channon Preston never backed that up, ever. And how likely --
24 ask yourself again, common sense, as the solicitor said, common
25 sense, how likely is it that Charles Green at the card-playing,

1 card-hustling table area, just goes up and just blithely throws
2 down money and says, here, take my money? Not likely, not
3 likely at all. Would you do that? No, it's
4 just not plausible.

5 And that card table, I asked Mr. Henry very
6 specifically if they played cards there, cards there on Murray
7 Drive. Remember? And he denied, oh, no, we don't play cards
8 there, no, never played cards there. But he told Fraser that
9 Channon Preston called him over there, hey, buddy, come on over,
10 we need to do our little hustle, come on. So he comes on over.
11 He lied right there on that witness stand to you, to every
12 single one of you. And I believe that he forgot, because the
13 Solicitor said, you know, you didn't go back over his testimony.
14 I believe he forgot he told Officer Fraser what they were doing.
15 And he gets up there and he's trying to think, what's she doing?
16 Is she trying to catch me in something? Well, she doesn't know
17 the truth. I can get away with a lie. And so he lies. That's
18 what he does, he lies.

19 Now, he's caught. I bring it to your attention. I
20 don't think you can see that as any other way than Clifton Henry
21 demonstrating his true character. Character, that's what you
22 are looking at.

23 And again, we know Channon Preston's mother kept guns
24 in her home at Murray Drive. Channon himself owns several guns.
25 There's testimony to that effect. She had a gun that someone

1 had stolen; couldn't find it.

2 Now, the officers had reason to believe, I guess
3 through their investigation, that these boys, Preston and Henry,
4 had been armed. Why else would they go looking for the guns?

5 We know, again, what Ashley Thomas told the Sheriff's
6 Department when they came to arrest Charles: They shot at him
7 first. Now, there is no evidence in this case where the
8 shooting at Charles Green took place. Was it at Murray Drive?
9 Was it at the Food Lion? Was this a continuing armed robbery by
10 Mr. Henry and Mr. Preston against Charles? No evidence
11 whatsoever.

12 I will tell you one thing which is pretty short.
13 Channon Preston does not want to come in here and tell you what
14 he saw. He doesn't want to tell you what he did that day. He
15 doesn't want to put himself in this. He made it clear when he
16 was talking about this that only Mr. Henry, Clifton Henry, got
17 any money from Charles Green. Because, you see, if he put
18 himself in getting some of that money and it led back to the
19 true facts of them taking his money, well, then he might be in
20 the detention center. Mr. Preston might be arrested for taking
21 Mr. Green's money.

22 Now nobody can find him. They've been looking for him.
23 It's obvious that he is -- he's hiding. He's hiding from you.
24 He's hiding from this courtroom and he has not been found and
25 he's not going to be found. You can take his absence into

1 consideration in this case.

2 So even if you can take Clifton Henry's hand and walk
3 with him with his story and believe his story, there is no
4 evidence that Charles Green committed attempted murder.

5 Now, excuse me one second. I'm not very good with
6 videos and DVDs, but I do teach some, so here we go. Attempted
7 murder - and here's the key for you - with intent to kill, this
8 is what's required by the statute for the State to prove, that
9 at the time Charles Green was firing a shotgun, if you believe
10 that he did, that he intended to kill him, Mr. Henry. There's
11 no evidence whatsoever. We are going to get to why there's not
12 any.

13 More of the expressed or implied, His Honor will
14 express that to you. But this is the case. You can't even get
15 here unless you are here. Malice aforethought.

16 Now, the next one, as the Solicitor talked about, is
17 lesser-included offense, which the judge has agreed the elements
18 in this case could meet. You could find lesser charges based
19 upon the evidence. ABHAN, a person commits the offense of
20 assault and battery of high and aggravated nature if the person
21 unlawfully injures another person and great bodily injury
22 results.

23 And I'm going to give you the definition of great
24 bodily injury, and so is His Honor. That's why I asked the
25 doctor all those questions. Doesn't meet this criteria at all;

1 or likely to produce death or great bodily injury, again,
2 doesn't meet that as well, based upon the injuries.

3 Now, the next one is assault and battery in the second
4 degree. A person commits the offense of assault and battery in
5 the second degree if the person unlawfully injures another
6 person or offers or attempts to injure with the present ability
7 to do so - here's the kicker - and moderate bodily injury to
8 another person results.

9 Maybe we have moderate bodily injury, if you believe
10 that Charles did shoot at Mr. Henry, and no great bodily injury,
11 but definitely you could find -- because I'm completely honest
12 with you, you could find moderate bodily injury.

13 So let's talk about what those injuries mean. Again, I
14 said there is no great bodily injury. And let's talk about why.
15 It means -- moderate bodily injury causes a substantial risk of
16 death. He was in the ER for less than two hours. He had
17 birdshot to his arm and his leg. There's no -- there was no
18 substantial risk of death to Mr. Henry which causes serious
19 permanent disfigurement, the doctor testified none of that, or
20 protracted loss or impairment of the function of a member of the
21 body or an organ.

22 The State's case has no evidence at all of great bodily
23 injury. And this is what is required by the statute if you want
24 to consider assault and battery of a
25 high and aggravated nature.

1 Next, moderate bodily injury, and this is the one that
2 I said, again, this is physical injury requiring treatment to an
3 organ system. There were no organs involved in the birdshot in
4 his arm and his leg. Skin, muscles, connective tissues -- where
5 there is penetration of the skin, muscles and connective tissues
6 that require -- again, penetrated the skin, but it did not
7 require a surgery of a complex nature. They gave him some
8 narcotics, patched him up a little bit, and sent him right out
9 about two hours later, or when treatment requires the use of --
10 and you heard me ask the doctor -- regional or general
11 anesthesia. No. So it's possible it's not even moderate bodily
12 injury whatsoever.

13 This is a confusing statute. His Honor is going to
14 charge you on it. If you need to hear it again, the elements,
15 you can ask to do that, and come back in here and the judge will
16 tell you all of that information that I just went over with you
17 again.

18 Now, the solicitor is correct that when you move down
19 the ladder of the lesser-included offenses, you can make a
20 determination, again, complete candor, at best, if you grabbed
21 Clifton Henry's hand and walked with him, it's an assault and
22 battery in the second degree, at best, which means you cannot
23 find Charles Green guilty of possession of a weapon during the
24 commission of a violent crime. But, again, in complete candor,
25 Charles can't possess a gun. So if you believe Mr. Henry and

1 you think Charles shot at the ground or in the air or in the
2 general direction, not intending to kill Mr. Henry, he's guilty
3 of possessing a firearm. We know that. I mean, I'm not going
4 to stand up here and tell you he's not. That's the law.

5 So I say to you at this time, I'm most appreciative of
6 your attention to me, most completely trusting that you honor
7 the principles of this courtroom, the foundations that I talked
8 about at the beginning, and that I believe that you will return
9 a verdict that speaks the truth as to what really happened here
10 in this case. Thank you so much.

11 THE COURT: Okay. Jurors, final phase of the trial.
12 I'm going to instruct you on the law, and then you are going to
13 go back and discuss the facts as presented, how that relates to
14 the law as I instruct you, and reach the verdicts on the three
15 indictment charges that will be submitted to you.

16 Now, Mr. Foreman, your vote counts no more than anybody
17 else, of course. You don't get paid any more. You do act as
18 spokesperson for the jury. You just preside over deliberations.
19 Your vote counts no more than anybody else's, you just kind of
20 keep it in order. If questions occur during deliberations, I
21 can't have any running meaningful conversations with you, but if
22 you could write them down with some specificity, I will confer
23 with counsel and see if I can answer your questions.

24 Now, I'm giving you the law in the abstract. Okay?
25 And it's not fact-specific in this case. You are to find the

1 facts, though in virtually any attempted murder case, it will be
2 the same law. Sometimes it varies. If you are trying burglary
3 cases, you know, whether it's a house or a dwelling or occupied
4 or unoccupied, all that, but the law on burglary is about the
5 same, even though burglary does have first degree, second
6 degree, and third degree, just like attempted murder and assault
7 and battery have, as I will explain to you in a little bit.

8 What I can't do is add anything to the case. All
9 right? So don't send back following questions - having done
10 this for 26 years. There were no fingerprints introduced.
11 There's no DNA. They got no tire prints. Anything that you
12 heard during the trial objection wasn't sustained to, you can
13 consider.

14 If you heard names mentioned and an individual did not
15 testify, don't write back something and say, I would like to
16 hear testimony from so-and-so. If they didn't testify, they
17 didn't testify.

18 During the trial, officers sometimes refer to notes.
19 You could consider what you heard, but the notes were not
20 introduced into evidence. Don't say you would like to see the
21 notes. Okay? Anything that was officially introduced into
22 evidence will be with you while you deliberate, with a couple of
23 exceptions. Video is not going to come back, but it's in
24 evidence. If you want to see it again, you can. 911 tape's
25 introduced into evidence. I'm not going to send it back there,

1 not that y'all have CD players or anything, but we could play it
2 again if you want. You know, anything that is introduced into
3 evidence, you can consider. You will have with you everything
4 that has been introduced except, I think, the video and the CD.
5 They will not come back, but they are in evidence and you can
6 look at them if you would like.

7 Now, I explained to you at the start of the trial that
8 when a trial commences, the State makes charges against an
9 individual. The indictment is issued. The indictment charges
10 the commission of the crime. The fact that a person is charged
11 with a commission of a crime creates no inference of guilt
12 against an individual. Every person accused of a crime is
13 presumed innocent in this country. The presumption stays with
14 them through deliberation of the jury, only removed if jurors
15 unanimously find that an individual has committed a crime
16 embraced within the evidence based upon proof by the State
17 beyond a reasonable doubt that the crime was committed.

18 Defendant is presumed innocent. The defendant has
19 absolutely no burden to present any evidence or to testify
20 during a trial. I explained to you earlier that the fact that
21 the defendant did not testify can't even be discussed by you
22 while you deliberate.

23 Now, not necessarily in any particular order, the first
24 indictment I'm holding up alleges that Charles Green, on April
25 the 6th, 2011, did carry about his person a firearm described as

1 being a shotgun in violation of Section 16-23-500 of the code of
2 laws of South Carolina.

3 I'm going to instruct you in a little bit on other
4 indictments. And when I give you the elements of those
5 indictments, I'm going to mention that the State has to prove
6 beyond a reasonable doubt criminal intent. Possession of a
7 firearm by a person who has previously been convicted of having
8 a violent crime does not require intent. Individual might not
9 even know they can't possess a firearm. That's just a
10 collateral consequence of the pleading or being convicted of a
11 violent crime.

12 Violent crimes are defined by the legislature. All
13 right? Drug trafficking is something that you wouldn't
14 necessarily think is a violent crime, but the legislature said
15 that it is. And for instance, drug trafficking, while you see
16 movies about trafficking and all that, you think of machine guns
17 blasting, people
18 running across the border carrying drugs. Drug trafficking
19 charge just contains weight. And you have the indictment. I'm
20 not commenting on any evidence in the case much, except this,
21 which I have to, since this is in evidence that he pled guilty
22 to trafficking in cocaine, 10 to 28 ounces. That means he had
23 at least 10
24 ounces in his possession. That's drug trafficking. That's
25 classified as a crime of violence. Three is 10 to 28. Penalty

1 increases the more that you have in your possession. Of course,
2 when you do go running across the border with a truckload of
3 stuff with a machine gun, that gets higher. But that's not what
4 he pled guilty to, but it's classified -- trafficking in cocaine
5 within that weight that's listed there, is classified as a crime
6 of violence.

7 Since he pled guilty to committing a crime of violence,
8 if he had a firearm in his possession, the State meets its
9 burden of proof beyond a reasonable doubt.

10 Now, what the State alleges is that he had a shotgun.
11 And the legislature codifies all laws and they define all terms.
12 You basically know what a shotgun is, but just shotgun means a
13 weapon designed, made or remade and intended to be fired from
14 the shoulder and designed, made or remade to use the energy of
15 the explosive in a fixed shotgun shell to fire through a smooth
16 bore, either a number of ball shot or a single projectile from
17 each pull of the trigger or triggers. Y'all know what a shotgun
18 is. I don't have to define it for you.

19 In order to obtain a conviction on this charge, the
20 State has to prove that Charles Green on this date in question
21 did have in his possession a firearm, specifically a shotgun.
22 It's not contested that he has a prior violent crime that was
23 introduced into evidence. What is at issue is whether he had a
24 shotgun in his possession on this particular day. Statute says
25 firearm.

1 Firearm, by definition includes shotgun. I didn't read you about
2 pistols and everything else a convicted person can't have. All
3 right.

4 Second indictment alleges that on that date, April the
5 6th, 2011, Charles Green did possess a shotgun while committing
6 a violent crime. All right. In order to obtain a conviction on
7 that charge, the State has to convince you that on April the
8 6th, 2011 -- any time I said they must convince you, talking
9 about beyond a reasonable doubt -- that he had a -- that he
10 committed a violent crime while he possessed a weapon,
11 specifically in this case a shotgun. And a person must be
12 convicted
13 of having committed a violent crime before they can be guilty of
14 having in their possession a weapon.

15 In a little bit I'm going to instruct you on the
16 indictment, the last one I'm coming to on attempted murder, and
17 it includes lesser-included offenses that you can consider. And
18 I'm not suggesting that you find Mr. Green guilty or not guilty
19 of anything. I think you understand that's going to be your
20 choice, but it's like the legislature makes crimes and they
21 include lesser elements to the crimes. Like -- this is not that
22 kind of case. Burglary in the first degree is trying to enter
23 somebody's house at night armed with a weapon with attempt to
24 commit a crime. Burglary in the second degree on down have all
25 the elements of burglary in the first. Burglary in the third

1 degree might be entering your car out there when nobody is home.
2 Anyway, higher crime; less penalty. You aren't concerned with
3 the penalty. Judge does the sentencing if the person is found
4 out guilty. And what the sentence is has no bearing on whether
5 he committed crime or not. That's up to the jurors to make that
6 determination.

7 Now, last indictment charges Charles Green with
8 attempted murder. Attempted murder is unlawful attempt to kill
9 one human being with malice aforethought, either expressed or
10 implied. I will define that to you in a little bit, but this
11 charge also includes assault and battery of a high and
12 aggravated nature, which is a lesser-included offense. And then
13 assault and battery in
14 the second degree I will instruct you on.

15 And I will tell you why we are not doing first degree
16 also when we get to that point. But the last thing, assault and
17 battery second degree is not a crime of violence. So if you
18 find him guilty of that -- again, I'm not suggesting you find
19 him guilty of anything, you would not find him, could not find
20 him guilty of possessing a weapon while committing a violent
21 crime. You first have to find him guilty of committing a
22 violent crime, which is the first two verdict forms that you
23 will consider.

24 It does take a unanimous decision of you 12 jurors to
25 reach a verdict in matters that are going to be submitted to

1 you. Alternate juror, you need to keep paying attention when I
2 conclude these remarks. I'm going to ask the jury to step out.
3 And don't deliberate until I say, because, you know, there's a
4 good bit of law to cover. Attorneys hand up lots of things they
5 wanted
6 me to charge. I'm not reading everything to you, because that's
7 not my style. I keep eye contact with you so if somebody tries
8 to drop off, I get the bailiff to attack you so you know what's
9 going on. But I may misspeak or I may not cover everything in
10 sufficient details to the satisfaction of the attorneys. And if
11 I bring you back and instruct you further, put no emphasis on
12 that. It is just clarifying everything, making sure everything
13 was covered. As you know, there are different ways of saying
14 the same thing, and I try not to be too repetitive with that.

15 Now, to reach verdicts, you jurors are going to weigh
16 all the evidence that has been introduced during the trial.
17 Obviously, you will pass upon the credibility of the witnesses
18 who testified. As I explained at the start, I've given you the
19 law in the abstract. So the keys I've given you on identifying
20 witnesses' credibility applies to every witness, not just one
21 witness. All right.

22 Certainly, you would take into account the appearance
23 or demeanor of a witness when a person testifies. Opportunity
24 that a witness had to see, hear, or observe what a witness
25 testified to should be considered by you. You should consider

1 any interest or bias that the witness has in the outcome of the
2 proceedings; whether a witness's testimony is consistent or
3 inconsistent should be considered by you; whether a witness
4 answers forthright or is hesitant in answering the question
5 should be considered by you. Whether testimony given by the
6 witness becomes stronger in your mind or made weaker by other
7 testimony or other evidence in the case are factors that you can
8 consider.

9 Kind of comes down to, jurors, just use your common
10 sense. You know, like would I buy a car from this salesperson
11 based on what the person tells me. Evaluate, you do that every
12 day.

13 Now, during the trial, we qualified one individual as
14 an expert. I don't vouch for him. He's a doctor, you know.
15 Doctors are doctors. Once a person is qualified as an expert,
16 they can give opinions within their field of expertise. Have to
17 give them to a reasonable degree of certainty before you can
18 accept their opinions. And if an expert or qualified expert
19 gives opinions outside their realm of expertise, you know, it's
20 just not expert testimony on those issues.

21 Any time, jurors, an individual testifies, if they
22 previously committed crimes, those crimes can generally be
23 brought out. If the crimes are brought out, you can consider
24 whether the fact that an individual has committed a prior crime
25 impacts that particular witness's credibility.

1 Now, attorneys made opening statements to you. The
2 attorneys made summations. They are supposed to represent their
3 side, you know. They made suggest conclusions you should draw
4 from evidence that was presented before you. But attorneys are
5 not sworn witnesses. They just are advocates for their
6 particular position. And certainly wouldn't mislead you in any
7 way, but the fact that they suggest you draw certain conclusions
8 with no objection to it, you can consider that suggestion, but
9 you are not bound by it.

10 In other words, it is up to you jurors to decide
11 whether the State has met its burden of proof beyond a
12 reasonable doubt on the issues that are submitted to you.

13 Now, beyond a reasonable doubt is pretty simple. It's
14 just the kind of doubt that would cause an ordinary person to
15 hesitate to act. Actual definition, would cause a reasonable
16 person to hesitate to act. English 101 they told me don't use
17 the main word when defining definitions. Reasonable doubt, you
18 just -- so just ordinary reasonable person, cause them to
19 hesitate to act, or it's evidence that leaves you firmly
20 convinced
21 that the individual has committed a crime. If you are not
22 firmly convinced, obviously, you have reasonable doubt, so you
23 should find the individual not guilty.

24 Now, the State has to prove each element of the crime
25 before you can -- beyond a reasonable doubt before you could

1 find a person guilty of that crime. If the element is not
2 proved beyond a reasonable doubt, the State hadn't met its
3 burden of proof. And, again, the defendant does not have to
4 disprove, but the State has to
5 prove beyond a reasonable doubt.

6 I mentioned earlier, just talking about the testimony,
7 that the fact that the defendant did not testify can't be
8 considered by you at all. Don't even discuss that. He has a
9 constitutional right not to testify. He has no burden of proof
10 on him at all. Doesn't have to put up a defense. As a matter
11 of fact, shouldn't -- those facts shouldn't even be considered
12 by you. The issue is whether the State has convinced you beyond
13 a reasonable doubt that the defendant committed a crime.

14 Now, before I go into the law of murder and so forth,
15 I'm going to go over the verdict form. 12 jurors have to agree.
16 Only the foreperson signs the form. And first verdict I'm
17 holding up is the one involving the possession of a weapon by a
18 person previously convicted of a violent crime. Verdict is
19 pretty simple. Not guilty or guilty, guilty or not guilty. The
20 order in which this verdict is typed on there has no bearing.
21 There's only two ways you can do it, and in this case, the
22 solicitor prepared the indictments. Solicitor prepared -- I
23 mean, the verdict, solicitor prepares the verdict. Solicitor
24 always puts guilty first. If defense counsel prepared the
25 verdict, they always put not guilty first. Only two forms of

1 verdict. Okay? Order in which they are typed on here has no
2 bearing.

3 So the jury would consider whether the State met its
4 burden of proof, reasonable doubt of possession of a firearm by
5 a person convicted of a felony, is what it says, but what we
6 are talking about is violent crime. All right? And then as you
7 reach the verdict on that, Foreperson, you sign. 12 jurors have
8 to agree.

9 On the possession of a weapon while committing a
10 violent crime, again, verdict form is not guilty, guilty, guilty
11 or not guilty. 12 jurors have to agree. And you can only find
12 Mr. Green guilty of possession of a weapon while committing a
13 violent crime if you first find him guilty of a violent crime.

14 As I'm going to go over the verdict form, attempted
15 murder, you will have three choices there, guilty or not guilty
16 of attempted murder, guilty or not guilty of assault and battery
17 of a high and aggravated nature, or guilty/not guilty of assault
18 and battery in the second degree.

19 Assault and battery in the second degree is not a crime
20 of violence, so if you find him guilty of that, and I'm not
21 suggesting that you do, you couldn't find him guilty of
22 possession of a weapon while committing a violent crime. You
23 would first have to find him guilty of either attempted murder
24 or assault and battery of a high and aggravated nature. Now,
25 that's not written on here, but I think y'all can basically

1 understand that.

2 Now, in its simplest form, as the statute says, murder
3 is the unlawful killing of one human being by another with
4 malice aforethought, expressed or implied, or inferred.

5 Attempted murder is a person is guilty of attempted murder if a
6 person who, with the intent to kill, attempts to kill another
7 person with malice aforethought either expressed or implied.

8 All right.

9 And I think you know, jurors, attempt means that you
10 have a direct plan to commit a crime, but you were unsuccessful
11 in carrying it out. Like, if you attempted murder, a person
12 died as a result of that action, with malice aforethought, they
13 would have been guilty of murder. So attempt is an offer to
14 accomplish a crime which does not succeed. Attempt includes a
15 specific intent to do a particular criminal act, along with an
16 act falling short of the intended consequences. In order to
17 find the person guilty of anything embraced within the
18 indictment, it charges Mr. Green with attempting a murder, and
19 included in that indictment is lesser-included charges of
20 assault and battery of a high and aggravated nature.

21 In the other charge of assault and battery second
22 degree, the State must prove the elements of the crime, and must
23 prove each of those elements beyond a reasonable doubt, and they
24 must prove criminal intent.

25 Jurors, when I'm explaining evidence in the case and so

1 forth, I neglected to tell you about circumstantial evidence.
2 Evidence is two types, direct evidence and circumstantial
3 evidence. Direct evidence, jurors, is where a person testifies
4 to something he or she has observed through their senses. Might
5 not be correct, but that's direct evidence. It's just like if
6 the bailiff here came in and says, it's raining outside. Might
7 be raining; might not. We can't tell.

8 If he came in and let down an umbrella and shakes water
9 off it and took a raincoat off and didn't say a word, we would
10 say, huh, raining outside. It could have been not necessarily
11 so, but that's a reasonable inference from that. So the State
12 can prove a case by direct evidence and by circumstantial
13 evidence.

14 Circumstances must be proved, circumstances beyond a
15 reasonable doubt, you know, from proven facts, reasonable
16 inferences to the existence of other facts, the State can prove
17 a case of guilt by a combination of direct evidence or
18 circumstantial evidence and so forth.

19 All right. The difference is where a person testifies
20 to something and they are sworn in here, that's direct evidence,
21 requires an inference to reach a position. Then you are in the
22 area of direct evidence. And the reason I hit it at this point
23 is because when I talk about malice, it can be expressed or
24 inferred or implied, you know. And criminal intent is the same
25 thing. Obviously, in an A and B scenario, if A says, I'm going

1 to kill you, shoot you, that shows specific intent and also
2 shows malice. But criminal intent is something that the State
3 must prove existed in the mind of the defendant. And the State
4 has to show that the defendant possessed the intent to commit a
5 particular crime and must show that by purpose, knowledge.
6 Criminal intent must be proved by the State beyond a reasonable
7 doubt.

8 Criminal intent is a matter that must be determined by
9 the jury from all the circumstances surrounding the situation.
10 There is no formula that can be given to you to prove to a
11 mathematical certainty what a person intended. Criminal intent
12 is a mental state, state of conscious wrongdoing. It's up to
13 the juror to determine what a defendant intended to do based
14 upon proof presented and based on the circumstances that
15 existed. Criminal intent can arise from action or inaction and
16 so forth.

17 Now, you heard a couple of times malice and malice
18 aforethought. Malice does not have to exist for any particular
19 period of time, jurors. Malice is hatred, ill will, or
20 hostility toward another person. It's the intentional doing of
21 a wrongful act without just cause or excuse and with an intent
22 to inflict an injury or under the circumstances that would
23 indicate presence of an evil intent.

24 Malice aforethought does not require that the malice
25 exists for any lengthy period of time, but it must exist prior

1 to action being taken. Malice can be expressed, implied or
2 inferred. I don't talk about different kinds of malice. It's
3 just a manner in which matters can be proved. It's generally
4 prove by jurors evaluating all of the circumstances. Malice can
5 be inferred from conduct allowing or showing a total disregard
6 for human life. And where malice is expressed, it's like
7 somebody says, I hate you, I'm going to kill you. It can be
8 inferred based upon all the surrounding circumstances.

9 And, again, I gave you the law in the abstract. I
10 can't tell you whether malice existed or not. You know, that's
11 up to you to do after you evaluate -- up for you to decide after
12 you consider all the facts presented, all the inferences
13 reasonably that you can draw from the evidence and so forth.

14 Now, I explained to you a couple of times that the
15 final indictment I went over charged Mr. Green with attempted
16 murder. And it's pretty simple in the statute. The State's got
17 onto convince you beyond a reasonable doubt that Mr. Green
18 attempted to kill the victim in this case with malice
19 aforethought, either expressed or implied or inferred.

20 If you consider the evidence presented and you find
21 that the State has failed to prove any one of the elements that
22 constitutes what the State has to prove, intent to kill, malice
23 aforethought, so forth, you can consider a lesser-included
24 charge.

25 If you find the absence of malice, obviously, you

1 couldn't find -- this is just for instance now -- you couldn't
2 find an individual guilty of attempted murder.

3 Included in the charge of attempted murder is a
4 lesser-included charge, which is first assault and battery of a
5 high and aggravated nature. A person commits the offense of
6 assault and battery of a high and aggravated nature if a person
7 unlawfully injures another person and, A, great bodily injury to
8 another person exists; or, B, the act is accomplished by means
9 likely to produce death or great bodily injury.

10 This is codified in Section 16-3-600 code of laws of
11 South Carolina. I'm not reading it all to you. But it breaks
12 down the assault and battery first, high and aggravated first
13 degree, second degree, third degree, and so forth, before you
14 can consider in this case. By letting you consider the lesser,
15 I'm not suggesting he's guilty of a lesser or the higher.
16 That's just evidence in the case. Again, it's up to you to find
17 the facts and what the State has proved or not proved beyond a
18 reasonable doubt.

19 Great bodily injury, jurors, is defined as bodily
20 injury which causes a substantial risk of death or which causes
21 serious permanent disfigurement or protracted loss or impairment
22 of the function of a bodily member or organ. A person -- if you
23 view all the evidence and you find the State hadn't convinced
24 you beyond a reasonable doubt that Mr. Green committed the crime
25 of attempted murder or of assault and battery of a high and

1 aggravated nature, you can consider assault and battery in the
2 second degree.

3 All right. I'm skipping assault and battery in the
4 first degree. And you say, why is he doing that? Bottom line,
5 assault and battery first degree requires injury to a person to
6 occur while a violent crime is being committed, you know, like
7 robbery or burglary or something like that. This one, evidence
8 presented during this trial, that's not actually there. So --
9 and I'm not suggesting that the elements are there; in any
10 event, the State has the burden of proving beyond a reasonable
11 doubt.

12 A person commits an offense of assault and battery in
13 the second degree if the person unlawfully injures another
14 person or offers or attempts to injure another person with the
15 present ability to do so, and moderate bodily injury to another
16 person results or moderate bodily injury to another person could
17 have resulted.

18 Moderate bodily injury means physical injury requiring
19 treatment to an organ system of the body other than the skin,
20 muscles and connective tissues of the body, except when there's
21 penetration of the skin, muscles and connective tissue that
22 require surgical repair of a complex nature or when the
23 treatment of the injuries require use of regional or general
24 anesthesia.

25 All right. Now, that's basically all. Since the

1 legislature went about it, they just changed this assault law a
2 couple years ago, but assault and battery in the second degree
3 does not require that the person be injured. I think you
4 probably picked up on that.

5 But they have to be offered to do moderate bodily
6 injury to them. And it's standard terms. Assault is offered to
7 injure to another person coupled with the ability to carry it
8 out. Battery is the consummation of it. Like if I told my
9 friend the bailiff there, I'm going to hit you, you know, and I
10 have to have the -- like this pen, I'm not going to hit you,
11 that's an assault.

12 Battery, if I throw it over and hit, if I miss him,
13 it's attempted assault and battery. All right.

14 But anyway, that only comes in the second -- in the
15 definition, once they put something in the definition in the
16 statute, I need to define it for you, I guess. So that's it.

17 Now, just looking over what the attorneys handed up.
18 All right. This is just an amplification of something.
19 Defendant pled not guilty to this indictment and that plea puts
20 the burden on the State to prove the defendant guilty. A person
21 charged with committing a criminal offense in South Carolina is
22 never required to prove himself innocent or not guilty. A
23 charge -- I charge you this important rule of law that the
24 defendant in criminal trial, no matter the seriousness of the
25 charge, will always be presumed innocent of the charge for which

1 the indictment was issued unless guilt is proved by evidence
2 satisfying you of that guilt beyond a reasonable doubt.

3 This presumption of innocence does not end when you
4 begin your deliberation, but accompanies the defendant
5 throughout the trial, and is only removed if you reach a verdict
6 of guilt based on evidence satisfying you of that guilt beyond a
7 reasonable doubt.

8 All right. Jurors, I'm not sending the indictments
9 back, simply because I explained to you what the law was, and
10 they put wrong code sections in there, put the name wrong and
11 things like that. So anyway, you understand that Mr. Green is
12 charged with the commission of three crimes, and attempted
13 murder includes lesser-included offenses of assault and battery
14 of a high and aggravated nature and assault and battery in the
15 second degree. And beyond that, I'm not going to instruct you
16 at this point. Don't start deliberating quite yet.

17 Alternate jurors will hang in here with us, and y'all
18 will step out.

19 (Whereupon, the jury leaves open court at 11:05 a.m.)

20 THE COURT: I need the alternate juror back, I told
21 you.

22 MS. CAMPBELL: Your Honor, I have a motion on the
23 charge though.

24 THE COURT: Just hold right there a minute. Say what
25 you want.

1 MS. CAMPBELL: May it please the Court, Your Honor.
2 The defendant would object to Your Honor's charge to the jury
3 that the higher the crime, the lesser the crime -- the lesser
4 the penalty.

5 THE COURT: Oh, forget it. They know that.

6 MS. CAMPBELL: Again, on behalf of Mr. Green, it was a
7 comment on the penalty, which --

8 THE COURT: Which I told them it wasn't any of their
9 concern. They may wonder why it's there.

10 MS. CAMPBELL: Thank you, Your Honor.

11 THE COURT: All right. Bring the alternate back in.

12 MS. CAMPBELL: Your Honor, Mr. Green needs to go to the
13 restroom now. May I let him go?

14 (Alternate excused.)

15 (Whereupon, jury deliberates.)

16 THE COURT: They want the definition of assault and
17 battery in the second degree and definition of assault and
18 battery of a high and aggravated nature.

19 MS. CAMPBELL: So you are going to bring them in?

20 THE COURT: I can't write that down. Just need to
21 bring them in. Y'all ready to bring the jury in. I think
22 that's all we can do, right?

23 MS. CAMPBELL: Yes, sir.

24 THE COURT: Two big differences, serious bodily injury
25 and bodily injury.

1 MS. SWANSON: Well, the prospect of serious bodily
2 injury.

3 THE COURT: I understand, but I'm talking about the
4 definition.

5 MS. CAMPBELL: So, Your Honor, you are going to charge
6 Defendant's 3, which is ABHAN, Defendant's 5, which is assault
7 and battery in the second degree, and then Defendant's 2, which
8 is the definitions of great bodily and --

9 THE COURT: I'm going to charge the definition. I'm
10 just going to read them the statute. That's all we do anyway.

11 MS. CAMPBELL: Yes, sir. Thank you.

12 (Whereupon, the jury returns to open court at 02:42
13 p.m.)

14 THE COURT: Okay. All right. Jurors, you know, I hate
15 to disappoint you. We are not having rib eyes tonight.

16 Anyway, now, y'all sent out a series of questions. And
17 last -- first, I think, it is three or four of y'all sent out,
18 and I conferred with the attorneys and made little notes on it,
19 which I assume y'all could read my handwriting.

20 A JUROR: We had a little trouble with one of them.

21 THE COURT: That's the best I could do. One of them I
22 just answered yes or no, and surely you could read that. But in
23 any event, I can't just write down the answer to these last two.
24 You want a definition of assault and battery of a high and
25 aggravated nature and definition of assault and battery in the

1 second degree.

2 Okay. Assault and battery of a high and aggravated
3 nature and assault and battery in the second degree are
4 lesser-included offenses of the charge of attempted murder.
5 Okay. I explained that to you, so I'm not going back into
6 attempted murder.

7 Now, assault and battery of a high and aggravated
8 nature, a person commits, by statute, a person commits the
9 offense of assault and battery of a high and aggravated nature
10 when a person unlawfully injures another person and great bodily
11 injury results, or the act is accomplished by means likely to
12 produce death or great bodily injury.

13 All right. Now, great bodily injury is defined under
14 Section 3-600A(1): Bodily injury which causes a substantial
15 risk of death or which causes serious permanent disfigurement or
16 protracted loss or impairment of the function of a bodily member
17 or organ. That's just the definition of that.

18 Now, assault and battery in the second degree. I
19 explained to you without going into it, since it is not
20 applicable, that you have assault and battery of a high and
21 aggravated nature, assault and battery in the first degree. You
22 asked what happened to that. Assault and battery second,
23 assault and battery third degree, so forth. All that you
24 consider is assault and battery of a high and aggravated nature,
25 and assault and battery in the second degree. Assault and

1 battery in the first degree requires that you be engaged in
2 armed robbery or something. Just forget it. Don't even
3 speculate on that. That's not in front of you. Okay?

4 So a person commits an offense of assault and battery
5 in the second degree if the person unlawfully injures another
6 person -- and here's a little different -- or offers or attempts
7 to injure another person with the present ability to do so, and
8 moderate bodily injury to another person results or moderate
9 bodily injury to another person could have resulted.

10 Moderate bodily injury is defined as follows, physical
11 injury requiring treatment to an organ system of the body other
12 than the skin, muscles and connective tissues of the body,
13 except when there is penetration of the skin, muscles and
14 connective tissues that require surgical repair of a complex
15 nature or when treatment of the injuries requires treatment with
16 regional or general anesthesia.

17 Y'all understand. Great bodily injury, death could
18 have resulted, or serious bodily injury. Moderate bodily
19 injury, death could not have resulted. You know, not commenting
20 on it, it's for you to view the evidence in the case.

21 And there's one other thing that you have -- sent back
22 other questions. Assault and battery of a high and aggravated
23 nature is classified as a crime of violence. So I'm not
24 suggesting that you find the defendant guilty of anything, but
25 if you find him guilty of assault and battery of a high and

1 aggravated nature, you could find him guilty of possession of a
2 weapon while committing a violent crime.

3 But if you find him guilty of assault and battery
4 second degree, you can't find him guilty of being armed with a
5 firearm while committing a violent crime because assault and
6 battery in the second degree is not classified as a violent
7 crime.

8 But since you sent out that other question, possessing
9 a weapon, you know, by somebody that has a prior record, that's
10 a separate thing that's not tied into this. State has a burden
11 of proof on those elements. You didn't ask for them, but you
12 know what they are.

13 A JUROR: We've got that voted on. We've got that one
14 behind us.

15 THE COURT: I can't tell you about the facts in the
16 case. That's for y'all to decide. I can't tell you whether the
17 State has met its burden of proof on any issue. That's up to
18 y'all. But they have the burden of proof on every element that
19 constitutes crime that individual is charged with beyond a
20 reasonable doubt.

21 So if y'all will go back and have at it, anything that
22 you want charged again, will be the same thing. Nothing I could
23 do to it. Both of these charges, of course, are intentional.

24 A JUROR: Did we get the definitions? Everybody happy
25 with the definitions? Okay. Good.

1 (Whereupon, the jury leaves open court at 02:49 p.m.)

2 THE COURT: All Right.

3 (Court's Exhibit 3, Jury note request for definition
4 of ABHAN, was marked for identification.)

5 (Court's Exhibit 4, Jury note definition of assault
6 and battery second degree, was marked for identification.)

7 (Court's Exhibit 5, Jury note asking if they can
8 convict defendant of possession of a firearm, was marked for
9 identificaton

10 (Court's Exhibit 6, Jury note asking if he can be
11 found guilty of possession of a weapon and/or possession of a
12 firearm by person convicted of felony, was marked for
13 identification.)

14 (Court's Exhibit 7, Jury note asking if the defendant
15 can be found guilty of possession of a weapon and/or possession
16 of a firearm by person convicted of a felony, was marked for
17 identification.)

18 (Court's Exhibit 8, Jury note asking if Charles Green
19 was arrested the day after shooting or two days after, was
20 marked for identification.)

21 THE COURT: Okay. I understand that the jury has
22 reached verdicts. Is the State ready to receive the verdict?

23 MS. SWANSON: Yes, sir.

24 THE COURT: What about the defense?

25 MS. CAMPBELL: Yes, sir.

1 THE COURT: All right.

2 (Whereupon, the jury returns to open court at 03:03
3 p.m.)

4 THE COURT: Okay. Mr. Foreman, has the jury reached a
5 verdict?

6 THE FOREPERSON: We have.

7 MS. CAMPBELL: Your Honor, may we sit down?

8 THE COURT: You can sit down. Okay. Historically,
9 bailiff hands them to me. It's not like on TV. The clerk reads
10 it, you know. My clerk who was in here is gone and Diane can't
11 read and write and understand English. No, she's a civil clerk,
12 not a criminal clerk. So on the attempted murder charge, jury
13 found Charles Green guilty of assault and battery of a high and
14 aggravated nature.

15 Mr. Foreman, you did not check not guilty of attempted
16 murder, but that, of course --

17 THE FOREPERSON: You infer that?

18 THE COURT: I think so. We will get him to sign it.

19 THE FOREPERSON: I'm happy to sign it and check it.

20 THE COURT: If that was the verdict of the jury, if you
21 find him not guilty of attempted murder, you don't have to go to
22 the last one, but you didn't --

23 THE FOREPERSON: All right. Well, he was not guilty in
24 our eyes of attempted murder.

25 THE COURT: Okay. That's fair. On the charge of

1 possession of a weapon during the violent crime, he was found
2 guilty. And on the possession of firearm by a person convicted
3 of a felony, he was found guilty.

4 Mr. Foreman, members of the jury, if that is your
5 verdict that I just read to you, just raise your right hand.

6 Anything else required of the jury?

7 MS. CAMPBELL: No, Your Honor.

8 THE COURT: Jurors, the next phase of the trial is I
9 sentence him. I used to just go into sentencing, not like in
10 federal court when they say come back in six months or whatever.
11 We do it that day. And I thought, you know, jurors would want
12 to stay. But since I give them an option, 90 percent of the
13 time the jurors leave. So that's your option. You can stay or
14 leave. It's up to you. If you want to stay, though, you need
15 to take them out and bring them back in, since they are no
16 longer jurors.

17 MS. CAMPBELL: Actually, Judge Kinard, I believe on
18 behalf of Mr. Green, I need to ask to have the jury polled.

19 THE COURT: Y'all remember your number? If you
20 remember your numbers, I'm just going to refer to numbers. We
21 are not reading your name. I'm going to ask you two questions.
22 And when I call your number, if you would just stand. And
23 question is: Was that your verdict and is that still your
24 verdict? And what we are talking about is when I read it, not
25 when you went back there and started deliberating. Okay.

1 Juror 77, was that your verdict?

2 A JUROR: Yes.

3 THE COURT: Is that still your verdict?

4 A JUROR: Yes.

5 THE COURT: Juror 215, was that your verdict?

6 A JUROR: Yes.

7 THE COURT: Is it still your verdict?

8 A JUROR: Yes.

9 THE COURT: Juror 140, was that your verdict?

10 A JUROR: Yes, Your Honor.

11 THE COURT: Is it still your verdict?

12 A JUROR: Yes.

13 THE COURT: Juror Number 5, was that your verdict?

14 A JUROR: Yes, Your Honor.

15 THE COURT: Is it still your verdict?

16 A JUROR: Yes.

17 THE COURT: Juror 249, was that your verdict?

18 A JUROR: Yes, Your Honor.

19 THE COURT: Is it still your verdict?

20 A JUROR: Yes.

21 THE COURT: Juror 220, was that your verdict?

22 A JUROR: Yes, Your Honor.

23 THE COURT: Is it still your verdict?

24 A JUROR: Yes, Your Honor.

25 THE COURT: Juror 56, was that your verdict?

1 A JUROR: Yes.

2 THE COURT: Is it still your verdict?

3 A JUROR: Yes.

4 THE COURT: Juror 105, was that your verdict?

5 A JUROR: Yes, Your Honor.

6 THE COURT: Is it still your verdict?

7 A JUROR: Yes.

8 THE COURT: Juror 204, was that your verdict?

9 A JUROR: Yes.

10 THE COURT: Is it still your verdict?

11 A JUROR: Yes.

12 THE COURT: Juror 267, was that your verdict?

13 A JUROR: Yes, Your Honor.

14 THE COURT: Still your verdict?

15 A JUROR: Yes, Your Honor.

16 THE COURT: Juror 142, was that your verdict?

17 A JUROR: Yes.

18 THE COURT: Is it still your verdict?

19 A JUROR: Yes.

20 THE COURT: Juror 246 -- Nancy?

21 A JUROR: She was the alternate.

22 THE CLERK: She must be the alternate. I don't have

23 246.

24 THE COURT: That's who I thought. Everybody has been

25 polled?

1 A JUROR: You didn't call my name or my number.

2 THE COURT: What is your number?

3 A JUROR: 248.

4 THE COURT: All right. Jill Puplava, was that your
5 verdict?

6 A JUROR: Yes.

7 THE COURT: Still your verdict?

8 A JUROR: Yes.

9 THE COURT: Anything else?

10 MS. CAMPBELL: No, Your Honor. Thank you.

11 THE COURT: Okay. Jurors, y'all know the drill. And
12 bailiff will explain to you about when you are going to get paid
13 and all that. And you are through for the week in any event.

14 (Whereupon, the jury leaves open court at 03:09 p.m.)

15 THE COURT: I need sentencing sheets, I guess.

16 MS. SWANSON: Your Honor, at the appropriate time, I
17 will address the Court on sentencing.

18 THE COURT: Well, Ms. Campbell, make any motions, I
19 guess.

20 MS. CAMPBELL: Your Honor, at this time the defendant
21 would make a motion for a new trial based upon the Court's
22 knowledge of our motion for directed verdict, the objections
23 that the defendant made during the trial that we were ruled
24 against on. We should have been allowed to argue self-defense
25 to the jury.

1 We made a motion for a mistrial based upon the
2 solicitor's improper comments in her closing and shifting the
3 burden and placing the burden upon the defendant to prove some
4 aspect of his innocence and as a comment on his right not to
5 testify. And we would ask for a new trial at this time, that
6 the jury clearly had difficulty and that the verdict does not
7 support the evidence in this case.

8 THE COURT: Okay. And, Ms. Swanson, you disagree, of
9 course?

10 MS. SWANSON: Yes, sir, I do. I believe that there's
11 an abundance of evidence in the record to support the verdict.

12 THE COURT: All right. Motion denied. So what about
13 Mr. Green?

14 MS. SWANSON: Thank you, Your Honor. As far as prior
15 record goes, it dates back to 1997 and begins with a resisting
16 arrest.

17 Then in 2003, he has an assault and battery, possession
18 with intent to distribute a controlled substance, and sale and
19 distribution of crack.

20 In 2007, he pled guilty to trafficking cocaine and an
21 involuntary manslaughter that was pled down from a murder charge
22 that occurred on New Year's Eve of 2005. He received five years
23 for involuntary manslaughter. And shortly after getting out, he
24 shot this victim in this case.

25 The State believes that a sentence of at least 20 years

1 is appropriate.

2 THE COURT: Okay.

3 MS. CAMPBELL: May it please the Court, Your Honor. I
4 spoke with the attorney for Mr. Green in reference to that
5 previous case with the involuntary manslaughter. And it's my
6 understanding that Mr. Green was in his own home. There was an
7 altercation. And there was a very strong self-defense argument
8 to be made in that case. I believe that's why the State reduced
9 the charge so significantly. And it was a bit of a bargain
10 between Mr. Green and the State because he had the pending
11 trafficking in cocaine at the same time. And so they wrapped it
12 all together in one plea deal, basically.

13 What I'm asking Your Honor to consider doing is
14 Mr. Green clearly will receive a five-year sentence on the
15 possession of a weapon during the commission of a violent crime.
16 The possession of a firearm by someone convicted of a violent
17 crime previously is 0 to 5.

18 And then, of course, the assault and battery of a high
19 and aggravated nature allows Your Honor the leeway between 0 and
20 20 years. What I'm asking Your Honor to do is to sentence
21 Mr. Green to a concurrent five-year sentence on all three
22 charges.

23 Thank you, Your Honor.

24 THE COURT: All right. Now, Mr. Green, you have the
25 right to allocute, meaning you can say something if you would

1 like, even though you didn't testify.

2 THE DEFENDANT: I'm innocent, sir.

3 THE COURT: You didn't testify as to that, so I can't
4 even consider that. Jury found you guilty of that. So what I'm
5 talking about, as far as background, Ms. Campbell didn't tell me
6 anything. All I know is you just got out of prison a short
7 while ago.

8 THE DEFENDANT: My kids. I mean, I'll miss my family,
9 my kids.

10 THE COURT: He has a problem allocuting. Is he
11 married, single, work anywhere?

12 MS. CAMPBELL: Charles -- yes, Your Honor. Charles was
13 incarcerated for a long period of time on this charge as well.
14 He's been out on electronic monitoring for some time now, since
15 last fall. Charles has never violated the terms of his
16 electronic monitoring. He's been a model citizen. He's gotten
17 in no trouble. He's not done anything to violate the court
18 order that issued and released him back into the community.

19 He has a family here. He has children here. Charles
20 is a resident of this community for many, many years. He's
21 well-known. And Charles is -- interestingly enough, he's a very
22 timid and soft-spoken man. There's never been a moment that's
23 been anything other than very quiet between the two of us.

24 THE COURT: Okay.

25 MS. SWANSON: If I may, Judge, there's one additional

1 thing that the State would like to bring to the Court's
2 attention. And it's just a fact that I found out in
3 investigating this case. But the defendant's nickname, what he
4 goes by and what he goes by on Facebook is C. Murda.

5 MS. CAMPBELL: Your Honor, and one final thing that
6 Ms. Caraway brought to my attention. I would just ask Your
7 Honor to make a notation on the sentencing sheet that Mr. Green
8 be given credit for the time from his period of incarceration on
9 this charge as it was pending and while he was on electronic
10 monitoring. I'm being told that that would be --

11 THE COURT: Well, the Department of Corrections
12 calculates all that. All I check is that he be given credit as
13 they calculate it.

14 MS. CAMPBELL: I'm just asking for you to include on
15 the sentencing sheet to include the period of time that
16 Mr. Green was on electronic monitoring.

17 THE COURT: They either give you credit for that or
18 they don't. I understand what you are asking.

19 MS. CAMPBELL: Okay. Thank you.

20 THE COURT: They said judges can't get into anything
21 about credit for time served.

22 All right. Mr. Green, you are 34 years old, right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How much time have you spent incarcerated?
25 Good bit from what I heard.

1 THE DEFENDANT: All together?

2 THE COURT: From the time you first got convicted of
3 something.

4 THE DEFENDANT: Like five years all together, three
5 years and --

6 THE COURT: All right. Of course, it is not something
7 that I impose on you, but assault and battery high and
8 aggravated is a violent crime. You already have one violent
9 crime in your background.

10 THE DEFENDANT: No, sir. I just have trafficking.

11 MS. CAMPBELL: Yes, that's violent.

12 THE COURT: Admitted into evidence is the sentencing
13 sheet where you got sentenced to what the legislature said was a
14 violent crime. You might not think it is violent, but doesn't
15 really matter. Whatever sentence I give you on the armed
16 robbery -- I mean, the assault and battery high and aggravated
17 nature charge is going to be a violent crime on your record.
18 That gives you two violent crimes.

19 Anytime you commit two or more violent crimes, if you
20 commit another crime that the legislature classifies as most
21 serious or violent, the State can ask for life without parole,
22 even though period of incarceration for that crime wouldn't
23 carry that much. Like, if you did drug trafficking again,
24 probably up to 20 if it was in that amount, 25, the State could
25 ask for

1 life. That's just a collateral consequence. That's not
2 something I do. It's just what happens.

3 So on the possession of the firearm by a person
4 previously convicted of violent crime, two years.

5 On the possession of a weapon while committing a crime
6 of violence, five years.

7 And on the assault and battery high and aggravated
8 nature, 15 years.

9 Jury found you guilty. They said the guy could have
10 died. You get credit for the time you served on
11 these charges.

12 MS. CAMPBELL: Thank you, Your Honor.

13 MS. SWANSON: Thank you, Your Honor.

14 (Proceedings are adjourned.)

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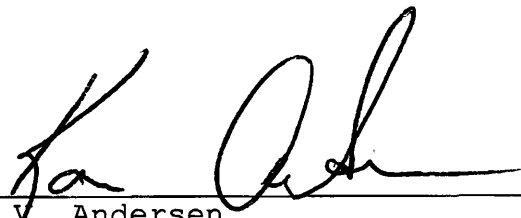
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State of
South Carolina at Large, do hereby certify that the foregoing
transcript is a true, accurate and complete Transcript of Record
of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in the
events thereof.

Witness my hand, I have hereunto affixed my official
seal this 11th day of January, 2014 at Charleston, Charleston
County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF BeaufortCharles Green Jr

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2015-CP-07-2386
IN THE COURT OF COMMON PLEAS

OCT - 1 PM 4:28

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correction 205 R. denville SC 29972
2. Name and location of Court which imposed sentence Beaufort County SC
3. Name(s) of co-defendant(s) (if any) Alshay Thomas
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 16-23-0500(A) Convicted of Felony
 - (b) 16-03-0029 Attempted Murder
 - (c) 16-23-0490 Poss weapon during violent crime
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Nov 20, 2013 sentence 15 years ABHAN
 - (b) Convicted of felony 2 years possession of weapon 5 years on current 15 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ lesser-included offense
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. direct appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. AFFIRMED conviction direct appeal
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. Affirmed conviction direct appeal
- iii. September 16, 2015
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of counsel Trial/Lawyer
 (b) and Appellate defense. Purgery & Prejudice
 (c) Prosecution misconduct 5 Amendment speedy trial direct order
by Judge violation of right fair trial
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to object to Prosecutions Mistrial Jury & Comment by Judge & Prosecution inaction
 (b) Appellant failing to raise Plain reversible Error under 5 Amendment
 (c) written statement's not the same as testimony. Prosecution Directing the Ju
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (c) the disposition thereof:
- i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) *Travis Campbell Trial Lawyer don't presented or*
- (b) *object to false Evidence Appellate Counsel don't*
- (c) *presented or raise Plain Error direct appeal issues*
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Trasi Campbell Beaufort County S.C.
- ii. Trial Lawyer Benjamin John Tripp
- iii. Appellate Defense Lawyer Columbia
- (b) the proceedings at which each such attorney represented you:
- i. Trial Lawyer Trasi Campbell Beaufort
- ii. County S.C. Benjamin John Tripp Appellate Lawyer
- iii. Columbia S.C.

19. State clearly the relief you seek in filing this application:

Sentence vacated or reconstitution Plan

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Charles Gray Jr

SWORN to and subscribed before me this 29th
day of September, 2015.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
29th day of September, 2015


Notary Public

My Commission Expires: May 26, 2020

this is inmate Charles Green JR 320693 to whom may concern
 I would like to Amended my PCR applicable case #
 1015-CP-07-2386 to the Court these issue.

ineffective counsel of trial and Appellate Lawyer
 O. Norris Claim failure to give the ordinary and plan meaning charge upon
 request was applicable to me Assault and battery ①. Said it don't to jury law

1. 6 Amendment speedy trial violation.
 2. 5 Amendment Direct order signature and by Judge and Date for
 a final arrangement date the Judge give to Court Violation of 5 ⇒
 ⇒ Amendment. don't mean Judge order

3. state Misconduct and Present of false Evidence

4. Motions and Notice Lawyer and Court Failing to Subpoena
 Witness

5. Counsel failing to object to Judge improper comment in presence
 of the jury

6. Counsel was sleep during trial don't show the Evidence to Judge
 object statement and police reports to him for my favor

7. Eliciting Damaging Evidence and making Damaging arguments Hearsay

8. Impeaching witness

9. Miscellaneous

10. Counsel ~~not~~ Ineffective for not representing during trial and not
 study my case and getting to no me before trial state made
 false statement during trial Lawyer Don't object cause she don't
 Elementor Evidence to prove self defense during

2016 FEB 16 PM 3:16

This is I mate Charles Green Jr #320693 to whom may concern
I would like to Amend my PCR applicable case #
2015-CP07-2386 to Court these issues.

Ineffective Assistance counsel

② Ineffective counsel trial Lawyer violated 6 Amendment
Right. ~~_____~~ ③ By not showing up on final trial date
Judge by ^{key word} conclusion the Ending date Didn't Assisted ~~me~~ the
Client ③ Didn't Assisted the client to be seen by the Judge
that ~~_____~~ wrote the order to be tried or End on final date in
Court. ④ And ~~_____~~ didn't present Speedy trial Motion that
was filed to the Clerk of Court, to the Judge during trial
to show that my 6 Amendment was Violated of 20 month
Delay and make a Motion to be dismissed ^{under} Constitutional Safeguards
to the Court of that Date by Judge. And prosecutions date 2 year Delay
on Monitored house Arrest didn't Assisted me to be ~~_____~~
after the final trial Date leg Monitored \$280 a month ^{taking off} ~~_____~~ Eu
order by Judge, to be tried or End. S. Add Didn't get credit for
leg Monitored under Section 24-13-40 of the 1976 code as 195% object
amended should have got Credit ^{to do} ~~_____~~ to this effect approved by the
Governor, Approved the 7th day of June, 2013 Ineffectived
Assistance Counsel, Didn't Assistance on these Date's and issue's and Dia
object to Judge S Amendment violation to the order by ~~_____~~ another

Amended PCR applicable # Case 2015-CP07-2386
to the court these issues Charles Green JR #320693

1. Ineffective Assisted Counsel Appellate Lawyer
for not raising plain reversible error in Direct Appeals
Court

2. Ineffective Assisted Counsel Trial Lawyer
Failure to make an contemporaneous objection and properly such
Claim for appellate review

3. Trial Counsel performance during the sentencing phase was both
unreasonable and prejudicial

4. Counsel failed to object on all possible grounds to
inflammatory and irrelevant evidence and by Judge an
prosecution during trial.

5. Counsel failed to investigate develop and present all available
relevant and admissible mitigating evidence to court

6. Ineffective Assisted Counsel Trial Lawyer for not showing
that my Amendent Right was violated 6, 5, 4, 1, 8, 14
Amendent Right violated to the Court.

Charles Green JR

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Charles Green, Jr., #320693,

2015-CP-07-2386

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on October 1, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the May 2011 term of the Charleston County Grand Jury for one (1) count of Attempted Murder, one (1) count of Possession of a Weapon During a Violent Crime, one (1) count of Possession of a Firearm by a Person Convicted of a Violent Crime (2011-GS-07-0851, -0852, -0853). Trasi Campbell, Esquire, represented him. On November 18, 2013, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted for one (1) count of Possession of a Weapon During a Violent Crime and one (1) count of Possession of a Firearm by a Person Convicted of a Violent Crime. The Applicant was found guilty to a lesser charge of Assault and Battery of a High and Aggravated Nature. The Honorable J. Earnest Kinard, Jr. sentenced the Applicant to confinement for fifteen (15) years for the count of Assault and Battery of a High and Aggravated Nature, five (5) years for the

count of Possession of a Weapon During a Violent Crime, and two (2) years for the count of Possession of a Firearm by a Person Convicted of a Violent Crime. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Green, Op. No. 2015-UP-458 (filed on September 16, 2015). The Remittitur was issued on October 27, 2015.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel by Trial Counsel and Appellate Defense"
 - a. "Purgery and Prejudice"
 - b. "Counsel failed to object to comment by Judge and prosecution (sic) these indictment (sic)"
 - c. "Appellant (sic) failing (sic) raise plain reversible error under 5th Amendment"
2. "Prosecution (sic) misconduct"
 - a. "Written statement's (sic) not the same as testimony"
 - b. "Prosecution (sic) directing (sic) the jury"
3. "5th Amendment (speedy trial)"
 - a. "Direct Order by judge violation of right to fair trial"

For the purpose of this Return, the Respondent incorporates the application, Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's first allegation as alleging ineffective assistance of trial counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial

counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably

raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicants burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

The Respondent interprets Applicant's third claim as an allegation that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is

impossible for the State to respond.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

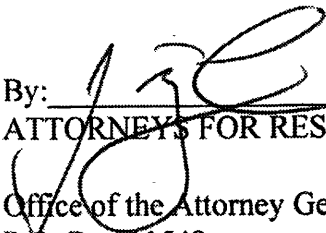
Respectfully submitted,

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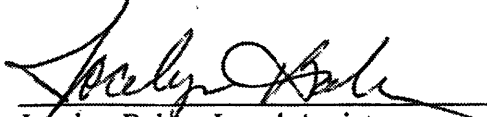
MAY 13th, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2015-CP-07-2386
	)	
CHARLES GREEN, JR., #320693,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402-1058

DATED this 13th day of May, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2015-CP-07-02386

CHARLES GREEN, JR.

APPLICANT

VERSUS

STATE OF SOUTH CAROLINA

RESPONDENT

JANUARY 29, 2018

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING

BEAUFORT, BEAUFORT COUNTY, SOUTH CAROLINA

BEFORE HON. R. LAWTON MCINTOSH, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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INDEX

Caption.....	1
Appearances.....	2
Index.....	3
By the Court.....	5

TRASI CAMPBELL

Direct Examination	
By Mr. Falk.....	9
Cross-examination	
By Mr. Mitchell.....	22

CHARLES GREEN, JR.

Direct Examination	
By Mr. Falk.....	25
Cross-examination	
By Mr. Mitchell.....	33

BENJAMIN JOHN TRIPP

Direct Examination	
By Mr. Falk.....	41
Cross-examination	
By Mr. Mitchell.....	45
Ruling.....	47

ATTACHMENTS

Certificate of Reporter.....51

EXHIBITS**COURT:**

- 1 3 Documents Identified as:
 - (1) Notebook Summary Listing
 - (2) Handwritten Court Order
Dated 9-17-2012
 - (3) Motion for Speedy Trial.....31

APPLICANT:

- 1 Document Titled
Statement of
Ashley Thomas
Dated 4-7-2011
Admitted as Evidence.....20

1-29-18 GREEN V STATE

BY THE COURT

1 BEGINNING 12:16 P.M.

2 BY THE COURT:

3 THE COURT: All right. Go ahead.

4 MR. MITCHELL: Thank you, your Honor. Next case
5 will be Charles Green versus the State of South
6 Carolina, 2015-CP-07-02386.

7 All right, your Honor. The applicant is presently
8 incarcerated in the South Carolina Department of
9 Corrections, pursuant to the Beaufort County Clerk of
10 Court orders of commitment. The applicant was indicted
11 by the May 2011 term of the Charleston Grand Jury for
12 one count of attempted murder, and one count of
13 possession of a weapon during a violent crime, and one
14 count of possession of a firearm by a person convicted
15 of a violent crime.

16 Ms. Trasi Campbell represented him on November 18,
17 2013. The applicant proceeded to a jury trial, pursuant
18 to which he was found guilty as indicted for one count
19 of possession of a weapon during a violent crime, and
20 one count of possession of a firearm by a person
21 convicted of a violent crime. The applicant was also
22 found guilty of a lesser charge of assault and battery
23 of a high and aggravated nature.

24 He was sentenced to confinement for fifteen years
25 for the count of assault and battery of a high and

1-29-18 GREEN V STATE

BY THE COURT

1 aggravated nature; five years for the count of
2 possession of a weapon during a violent crime; and two
3 years for the count of possession of a firearm by a
4 person convicted of a violent crime.

5 A notice of appeal was filed on the applicant's
6 behalf, and an appeal was effected pursuant to *Anders v.*
7 *California*. The South Carolina Court of Appeals
8 confirmed applicant's conviction and sentence, and the
9 remittitur was returned to the Circuit Court on October
10 27, 2015. Mr. Green is present in the courtroom today
11 and represented by Mr. Falk.

12 THE COURT: Mr. Falk, if you would, I'm not quite
13 sure what the grounds are. I know it was ineffective,
14 prosecutorial misconduct, and violation of his *Fifth*
15 *Amendment*. Would you, as far as ineffective, would you
16 articulate what those grounds are?

17 MR. FALK: First of all, I do want to make one
18 minor correction about the record is that Appellate
19 Defense filed a merits brief in this case.

20 THE COURT: Okay.

21 MR. FALK: He is alleging that he is prejudiced by
22 the fact --

23 THE COURT: No. Pursuant to *Rule 11* and by other
24 grounds, what are his grounds? And we're going to go
25 forward with that. I'm not going to let him just throw

1-29-18 GREEN V STATE

BY THE COURT

1 out anything and see if it sticks. I want to hear what
2 the grounds are that we're going to pursue, and not just
3 throw everything out there. Okay, sir?

4 MR. FALK: Trial counsel failed to object to
5 prejudicial hearsay, prejudicial -- trial counsel failed
6 to object to prejudicial hearsay testimony.

7 THE COURT: Okay.

8 MR. FALK: May I address one point?

9 THE COURT: Just one second. I want to make sure I
10 get these right. Under your ineffective assistance
11 claim, one ground is that counsel failed to object to
12 prejudicial hearsay.

13 MR. FALK: That's correct.

14 THE COURT: Any other basis of this claim of
15 ineffective assistance of counsel?

16 MR. FALK: If we are speaking in terms of *Rule 11*,
17 I would have to say no.

18 THE COURT: Okay, sir. Then, prosecutorial
19 misconduct. Is there a viable claim there?

20 MR. FALK: Again, if we're -- under the limitations
21 of *Rule 11*, I'd have to say no.

22 THE COURT: Well, you are. And then, under *Fifth*
23 *Amendment*, any grounds there?

24 MR. FALK: My answer is the same. Under --

25 THE COURT: So I will note, for the record, that

1-29-18 GREEN V STATE

BY THE COURT

1 the applicant, according to the Attorney General's
2 Office, who paraphrases his grounds, has alleged -- and
3 I'm -- for the record, I know you're objecting to me
4 limiting you to *Rule 11* basis, but under ineffective
5 assistance of counsel, those allegations are perjury and
6 prejudice.

7 Next was the allegation counsel failed to object to
8 comment by judge and prosecution. These indictments say
9 -- appellate failure to raise claim of reversible error
10 under the *Fifth Amendment*, that was the grounds stated
11 by the applicant as to ineffective assistance.

12 Next was prosecutorial misconduct, and under which
13 there was a written statement, not the same as
14 testimony, and the prosecution was direct to the jury.

15 Then, under the *Fifth Amendment* claim, he had a
16 speedy trial, and brought as a direct order by the
17 judge, violation of right to fair trial.

18 All right. Now, based on your representations to
19 me, Mr. Falk, pursuant to my requirements that you do
20 so, under *Rule 11*, the only rule ground that we're
21 proceeding on today is counsel failed to object to
22 prejudicial hearsay, which caused some prejudice in this
23 case. Is that correct?

24 MR. FALK: Based on my review of the trial record,
25 yes, your Honor.

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 THE COURT: Okay, sir. Would you call your first
2 witness.

3 MR. FALK: If I could, just have a second to regroup
4 here.

5 THE COURT: Yes, sir.

6 MR. FALK: We call trial counsel to the stand.

7 THE COURT: Is that Ms. Campbell?

8 MR. FALK: Yes, sir.

9 MADAM CLERK: Do you solemnly swear or affirm to
10 truthfully answer all questions asked of you by this
11 court, so help you God?

12 TRASI CAMPBELL: I do.

13 MADAM CLERK: Thank you.

14 MR. FALK: Your Honor, if you could give me an
15 additional moment to explain to my client.

16 TRASI CAMPBELL, DIRECT

17 EXAMINATION, BY MR. FALK:

18 Q. Ms. Campbell, you work with the Public Defender's
19 Office, as far as your representation of Mr. Green in
20 this case.

21 A. Correct.

22 Q. And how many times did you speak with him prior to?

23 A. Many times.

24 Q. Okay. Did you review the discovery in this case?

25 A. Yes, I did.

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 Q. Okay. Can you tell me -- and I'm going to go to
2 the testimony of Clifton Henry, which starts on Page
3 101. 59 in the record on appeal. 101 in the
4 transcript. I'm not sure which you have.

5 A. Okay. I'm with you.

6 Q. Okay. Can you explain how Clifton Henry fit into
7 this case.

8 A. Yes. Give me just a second. So -- I'm sorry, I'm
9 looking at my notes. At the time, Mr. Green was charged
10 with attempted murder of Henry Clifton -- or Clifton
11 Henry. Sometimes the name is flip-flopped in the
12 reports. Kind of near the Food Lion or -- or the China
13 Wok area of -- of town, by gunshot. So I guess you
14 would say he was the victim.

15 Q. Okay. And this is a case where -- all right. So
16 Mr. Clifton Henry was one of the victims in this case.
17 Can you see, on Page 102 of the trial transcript, Page
18 70 in the record of appeal?

19 A. I'm on that page. Yes, sir.

20 Q. And in that -- so who is responding on those pages,
21 Lines 9 through 19? Who is that the testimony of?

22 A. Mr. -- it looked -- again, the name is flip-
23 flopped, but it says Henry Clifton here is answering a
24 question about Channing and the -- he throw -- he threw
25 two twenty-dollar bills on the table, took a twenty-

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 dollar bill, walked to Food Lion. Apparently, there was
2 some argument over money, and that's what he was talking
3 about.

4 Q. And do you recall who Channing was?

5 A. Channing Preston?

6 Q. Yes.

7 A. Yeah. Um-hmm.

8 Q. And how did Channing Preston fit into this?

9 A. Apparently, Channing was a witness to a portion of
10 the ongoing dispute that was alleged to have taken place
11 between Mr. Green and -- and the victim, I guess, Mr.
12 Henry Clifton or Clifton Henry.

13 Q. And what does Channing -- so this is Mr. Henry
14 talking about what Channing said. What did -- what is
15 that testimony about, starting on Line 16?

16 A. As far as I can tell, the testimony is relating to
17 this dispute over some money.

18 Q. But is that not Mr. Henry saying what Channing --
19 what this other person said; you better give us some of
20 that money?

21 A. Sure.

22 Q. Would that not be considered hearsay?

23 A. It's possible.

24 Q. But your decision -- did you consider whether or
25 not objecting to that testimony?

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 A. I did not object to it.

2 Q. Was your decision not to object to it based on some
3 trial strategy?

4 A. Yes.

5 Q. And what was the trial strategy?

6 A. The trial strategy involved pitting those witnesses
7 against one another. He said this at one point, he said
8 this at another point. On cross-examination it would
9 bring out the changing -- ever-changing nature of their
10 stories. So, if he puts it one way one time on direct,
11 and I bring it out as happening another way on a cross-
12 examination or through another witness, then I can use
13 that in closing. I didn't deem it to be something that
14 was harmful. In fact, I deemed it to be something that
15 was helpful. And ultimately, it -- it was somewhat
16 helpful, in that the jury found my client not guilty of
17 the attempted murder.

18 Q. Then, if you go on to Page 120 -- or 78 of -- what
19 document do you have up there? Do you have the record
20 on appeal or the transcript?

21 A. I think I have the record on appeal.

22 Q. Okay. Well, then I'll give you those pages.

23 A. Okay.

24 Q. 78.

25 A. 78? Sure.

1 THE COURT: What's that? What's the newest cite,
2 please, sir?

3 MR. FALK: Beg your pardon?

4 THE COURT: Page?

5 MR. FALK: Oh. Page 78 of the record on appeal.

6 THE COURT: 78. Thank you.

7 BY MR. FALK:

8 Q. And if you would read those first four lines on
9 Page 78.

10 A. It -- is this -- this is my cross-examination?

11 Q. Of Mr. Clifton Henry, Henry Clifton.

12 A. Right. And so:

13 *Channing said what you spend it on, but*
14 *he never said what he spent it on. Channing*
15 *said, well, you could've give us -- gave us*
16 *some of that money. And that's when he take*
17 *the two twenty-dollar bills and put it on the*
18 *table.*

19 *Do you recall telling Officer Frasier*
20 *that it was actually eleven hundred and not*
21 *seven hundred?*

22 Q. So your purpose in eliciting that hearsay testimony
23 was what? Was there a trial --

24 A. Well, the credibility of the witnesses is key in
25 any sort of situation like this. And so, the ability to

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 attack their credibility from different vantage points
2 during the trial helps sort of bring it all together for
3 when I'm arguing to the jury about why you shouldn't
4 believe this witness and you should believe this
5 witness.

6 Q. Okay. And if you could look at Page 85 in the
7 record on appeal.

8 A. Sure.

9 Q. Well, if you go to Page 82, you'll see that that's
10 the direct testimony, the testimony of Investigator
11 Frasier.

12 A. Sure. Yes, sir.

13 Q. Then, if you go over to Page 127, looking at that
14 paragraph that's Lines 4 through 9, does that still --
15 that's still Investigator Frasier's testimony; is it
16 not?

17 A. Correct.

18 Q. Okay. And the statement, *he told me he knew him as*
19 *C.J.*, who would -- under the facts in this case, who was
20 C.J.?

21 A. I believe the investigation revealed that C.J. was
22 referring to Charles Green, Jr.

23 Q. Okay. Your client?

24 A. Correct.

25 Q. Okay. So is that not a hearsay statement, and

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 that's an identification statement made by the
2 investigator?

3 A. I do -- I do not see it that way. This individual,
4 I believe -- again, the names are flip-flopped, but
5 Clifton Henry or Henry Clifton was the victim in the
6 case who reported who had assaulted and attacked him, to
7 the officer, and he had just previously testified.

8 Q. Okay. And then, I'll go to Page 93 on the record
9 on appeal.

10 A. Yes, sir.

11 Q. And who is testifying at this point in the
12 transcript?

13 THE COURT: Oh, it's 93?

14 MR. FALK: 93. Yes, your Honor.

15 BY MR. FALK:

16 A. My record does not say. I'm flipping back to -- do
17 you -- I'm sorry, I don't -- is it still -- I'm sorry,
18 your Honor. Is it still Investigator Frasier?

19 Q. I believe so.

20 A. Okay.

21 Q. And so, if you look at Page 16 through 20, there's
22 --

23 THE COURT: You're losing me, I'm sorry. Page 16
24 through 20?

25 MR. FALK: Excuse me. On Page 93 of the record on

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 appeal, and if you look at Lines 16 through 20.

2 THE COURT: Okay.

3 BY MR. FALK:

4 Q. They're discussing -- there is a statement made
5 about a statement that Ashley --

6 A. Um-hmm.

7 Q. -- said. And what was your -- did you believe that
8 that was a hearsay statement?

9 A. Yes. However, that statement was helpful to the
10 defense. I wouldn't object to it coming into evidence
11 that Ashley, who was particularly difficult to get ahold
12 of sometimes, if Frasier is going to testify that Ashley
13 yelled out that he, being Charles, didn't start it; that
14 they shot at him first, if that's in evidence through
15 Frasier, then I can argue that to the jury, which I feel
16 sure that I did it in some way. And I feel that that
17 was helpful.

18 Q. Was Ashley Thomas -- what is -- what was Ashley
19 Thomas' role in this?

20 A. Ashley was with Charles throughout most of these
21 events. So she would have been someone that I could
22 have argued to the jury was there and saw that Charles
23 was taking fire, and not giving fire, and it was more of
24 a self-defense sort of situation.

25 Q. Did she testify in the trial?

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 A. To -- to my memory, I don't know. I would have to
2 look at the record thoroughly to determine that.

3 Q. But that is a person who --

4 MR. FALK: And your Honor, I -- I -- there is one
5 additional issue that I should have discussed, and
6 that's whether or not trial counsel should have sought
7 to call Ashley Thomas as a witness in this case.

8 THE COURT: Is she here to testify today?

9 MR. FALK: No, your Honor. I'm just -- what we've
10 got is her statement that she's given to police.

11 THE COURT: Ashley Thomas?

12 -- MR. FALK: Yes, your Honor.

13 BY MR. FALK:

14 Q. Do you recall looking at the *Rule 5* materials in
15 this case?

16 A. I did.

17 Q. And what I've shown you, is that part of the *Rule 5*
18 materials in this case?

19 A. It appears to be, yes.

20 Q. And is that a statement -- and that page that I
21 showed you, is that a statement that Ashley Thomas gave
22 in this case?

23 A. It appears to be, yes.

24 Q. So based on your review of that statement, had she
25 testified consistently with that statement, would you

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 have wanted her to testify in this trial?

2 A. Yes. It -- it does appear we attempted to serve a
3 subpoena on Ms. Thomas, but I don't show that Mr.
4 Chapman, who was the investigator at the time, was able
5 to get the subpoena served.

6 Q. Do you think her testimony would have been helpful
7 to Mr. Green?

8 A. It could have been. If I remember correctly, she
9 had a little bit of a record, little bit of a problem
10 there as -- in terms of her credibility. So, if we
11 weren't able to locate her via the subpoena we had
12 prepared for her, it may have been better strategically
13 to get the testimony in through Frasier that -- that he
14 didn't start it, rather than subjecting us to, even if
15 we had our hands on her, to putting up a case,
16 essentially, solely her, with a shaky background record.
17 And then, at any point with Ashley, who, I know Ashley,
18 might not have testified as she had written in her
19 written statement. It just seemed a safer route for Mr.
20 Green to let Frasier lay the foundation of what I would
21 argue to the jury than relying on Ashley. But I do see
22 in the section of subpoenas for the trial that we did
23 attempt to locate her.

24 Q. Okay. Would her testimony have gone towards a
25 self-defense?

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 A. It could have.

2 Q. Had she testified consistently with her statement?

3 A. It could have. Again, her credibility was a
4 significant issue. As just sort of a -- a figure in the
5 jury's mind through Frasier's testimony, there was
6 nothing to attach to her that would dilute her
7 credibility, and the State didn't put anything up to
8 dilute it from Frasier's testimony. So.

9 Q. So, on the day of trial, when you realized you were
10 unable to serve Ashley Frasier -- Thomas, when you
11 realized you weren't able to serve her, did you consider
12 trying to seek a continuance so that she would be
13 available?

14 A. No, I did not -- I did not consider Ashley to be
15 reliable or in any way going to help Charles and impress
16 a jury that, you know, she was even being truthful when
17 she wrote this. It could have done more harm than good.
18 But I always subpoena and try to find everyone in a
19 case, officers and witnesses included. Subpoenas are
20 done and issued and attempts to serve made. But knowing
21 this person, knowing how she would come across to a
22 jury, Charles was better off with her being presented
23 through Officer Frasier's testimony. Which is, again,
24 they couldn't put a face or demeanor or anything like
25 that on her, but yet, I was able to argue it to a jury

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 that he didn't shoot first.

2 MR. FALK: Your Honor, I would ask that we get a
3 copy made of that document, this statement by -- and add
4 that as an exhibit to this PCR hearing. And may I
5 approach?

6 THE COURT: Yes, sir, you may. Can you mark that,
7 Madam Court Reporter, as Court Exhibit A, Exhibit 1.

8 COURT REPORTER: Okay. Applicant's Exhibit 1?

9 THE COURT: Sure.

10 DOCUMENT IDENTIFIED AS STATEMENT OF
11 ASHLEY THOMAS, DATED 4-7-2011
12 MARKED APPLICANT'S EXHIBIT NUMBER 1
13 ADMITTED AS EVIDENCE.

14 MR. FALK: Your Honor, may I approach the Bench?

15 THE COURT: Before we get a copy, you want to admit
16 it in the record so it'll be --

17 MR. FALK: Yes, sir.

18 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
19 HEARING OF COURTROOM. PRESENT: THE COURT,
20 MR. FALK, AND MR. MITCHELL.
21 END BENCH CONFERENCE.

22 THE COURT: For the record, we had a bench
23 conference, and counsel is concerned -- counsel for
24 applicant is concerned that the applicant has brought
25 here to these proceedings. I, of my own volition, sua

1-29-18 GREEN V STATE

TRASI CAMPBELL - DX - FALK

1 sponte, have excluded the grounds that I'll articulate
2 on the record earlier as not being relevant or
3 acknowledged, grounds that we can -- what's the term I'm
4 looking for, I'm drawing a blank. They are -- they're
5 not meritorious grounds, and therefore, I'm excluding
6 them from the testimony.

7 And I'm going to tell you, Mr. Green, that your
8 attorney is fighting for you, and he is concerned that
9 you're not going to be allowed to testify as to these
10 other grounds that you're claiming. But I'm not going
11 to let you testify as to that. You're protected on the
12 record that if I make a mistake in saying that they're
13 not meritorious or recognizable grounds, then, somebody
14 will correct me. But I'm not going to let you testify
15 to them, and your attorney is fighting for you on that
16 behalf. Okay?

17 APPLICANT GREEN: Okay.

18 THE COURT: I feel like that covers you
19 sufficiently and Mr. Falk.

20 MR. FALK: Thank you, your Honor.

21 THE COURT: Okay. Call your witness.

22 MR. FALK: No further questions of this witness.

23 THE COURT: May I ask a question?

24 TRASI CAMPBELL: Yes, sir.

25 THE COURT: You haven't been cross-examined yet?

1-29-18 GREEN V STATE

TRASI CAMPBELL - CX - MITCHELL

1 MR. MITCHELL: No, sir. May it please the Court,
2 your Honor?

3 THE COURT: Yes, sir.

4 TRASI CAMPBELL, CROSS-EXAMINATION

5 BY MR. MITCHELL:

6 Q. Ms. Campbell, if you could, will you describe the
7 effects that led up to the incident for which the
8 defendant was charged with this crime? Do you recall?

9 A. Well, to the best of my recollection, there was
10 some sort of card game, some sort of gambling or
11 something going on at a trailer. And then, there was an
12 argument over some money, and it spilled over into the
13 parking lot, or the area right in front of the Food
14 Lion, the China Wok, which is within walking distance of
15 the trailer area. And there were, of course, the
16 allegations that the, you know, there was money either
17 taken or something of that nature, back at the mobile
18 homes. And then, the allegation was leveled that
19 Charles had pulled up in a car with Ashley in the car,
20 or that Ashley was driving, then Charles got out and --
21 and fired upon the victim in the case. That's just the
22 basics.

23 Q. Now, let me ask you this. Do you recall if there
24 was surveillance video from any of the buildings out
25 there?

1 A. There was. There was some surveillance video, I
2 think, from the China Wok, and maybe even the Food Lion.
3 I know that there was, but you couldn't actually make
4 out a face, really, but you could see that there had
5 been a shooting. You know --

6 Q. Could you make --

7 A. -- to some extent.

8 Q. Could you make out the car that the shots came
9 from?

10 A. Yeah, the car is visible.

11 Q. Okay. Was the car connected to the defendant in
12 this case?

13 A. I don't -- it was -- I don't think it was his car.
14 Honestly, I can't remember.

15 Q. Okay. Let me ask you this question. The victim in
16 this case testified at trial, correct?

17 A. Yes, he did.

18 Q. Okay. And he made multiple previous statements,
19 correct?

20 A. I believe so.

21 Q. Okay. Do you recall -- and again, this is from
22 memory.

23 A. Um-hmm.

24 Q. Do you recall if you tried to cross-examine him
25 about those previous statements?

1-29-18 GREEN V STATE

TRASI CAMPBELL - CX - MITCHELL

1 A. I would have, yes. And probably, also, through --
2 and the fact that all of them had been drinking, you
3 know, just -- I would have, yes.

4 Q. Okay. Do you know if there was ever any evidence
5 that -- that came in that the defendant was shot at or
6 there was shots fired at him?

7 A. The only evidence I know that was able to come
8 through was the testimony of Frasier through -- through
9 Ashley, saying he didn't shoot first.

10 Q. Okay. And you testified that you tried --
11 obviously, you tried to subpoena Ms. Thomas, but --

12 A. We did.

13 Q. -- subpoena was unsuccessful?

14 A. Um-hmm. That's correct.

15 MR. MITCHELL: Judge, that's all the questions I
16 have for this witness.

17 THE COURT: Re-direct?

18 MR. FALK: No re-direct.

19 THE COURT: May this witness be excused?

20 MR. FALK: Yes.

21 THE COURT: Thank you, ma'am. Let's see the
22 statement. Do you have that statement, Mr. Falk, of Ms.
23 Thomas?

24 MR. FALK: Your Honor, in light of the previous
25 discussion, I do believe I can call my client to the

1-29-18 GREEN V STATE

CHARLES GREEN, JR. - DX - FALK

1 stand and ask him one question on an area that is still
2 relevant to the issues that he's raised on his PCR --

3 THE COURT: Okay.

4 MR. FALK: -- that I am going -- that we're going
5 forward with today on his PCR.

6 THE COURT: All right. Subject to your prior
7 objection as to my ruling. All right.

8 MR. FALK: Call Mr. Green to the stand.

9 THE COURT: Come around, Mr. Green.

10 MADAM CLERK: Place your left hand on the *Bible*,
11 and raise your right hand as best you can. Do you
12 solemnly swear or affirm to truthfully answer all
13 questions asked of you by this court, so help you God?

14 APPLICANT GREEN: Yes, ma'am.

15 MADAM CLERK: Thank you.

16 APPLICANT CHARLES GREEN, DIRECT

17 EXAMINATION, BY MR. FALK:

18 Q. State your name for the record please.

19 A. Charles Green, Jr.

20 Q. All right. Now, Mr. Green, I'm just going to ask
21 you questions regarding Ashley Thomas.

22 A. Um-hmm.

23 Q. And I want you to limit your responses as they
24 relate to Ashley Thomas. What was your relationship
25 with her?

1-29-18 GREEN V STATE

CHARLES GREEN, JR. - DX - FALK

1 A. That was my girlfriend.

2 Q. That was your girlfriend?

3 A. Yeah.

4 Q. And did you talk to your trial lawyer about whether
5 or not you wanted to call her as a witness?

6 A. I mean, that's what was -- the reasonable thing was
7 to do was, once he saw the statement, you know, because
8 she was in my behalf. And she really --

9 Q. Okay.

10 A. -- witnessed what they did to me.

11 Q. So then, you talked to your lawyer to say that you
12 wanted to have her in court?

13 A. I mean, as a lawyer, I thought that what she's
14 supposed to do.

15 Q. Okay. Had she been in court, what do you think she
16 would have testified to?

17 A. She would have testified and pointed out to the
18 dudes that they robbed me, and the jury would see that
19 -- that the statement would have been true, that they
20 robbed me.

21 Q. Okay. So there was certainly testimony about that
22 they started the gunfight?

23 A. Yes.

24 Q. But you believe that had she been present, she
25 would've also testified that they were the ones that

1-29-18 GREEN V STATE

CHARLES GREEN, JR. - DX - FALK

1 robbed you?

2 A. Yes. The same thing that Trasi was fighting off
3 when she elicited hearsay statement, she was -- she was
4 fighting off that. She should have just subpoenaed the
5 witness, let the witness tell the story, instead of
6 coming from her, and point out to what they really did
7 to me, the same thing she was fighting off, so the jury
8 could have went back and forth. But with her direct
9 testimony, it would have been pinpoint.

10 Q. And who's the her that you're talking about there?

11 A. Ashley Thomas' statement, sir.

12 Q. Okay.

13 A. The statement that she wrote.

14 Q. Okay.

15 A. The same statement that Trasi was fighting off.

16 Q. All right.

17 MR. FALK: I have no further questions.

18 A. Actually, can I say something?

19 THE COURT: If it's consistent with my ruling, you
20 may.

21 A. I'm going to be real true and it's honest to God
22 truth. I went to the bathroom, and actually, the
23 witness was out there in the lobby.

24 THE COURT: Who, Ms. Thomas?

25 A. Yes, sir.

1-29-18 GREEN V STATE

CHARLES GREEN, JR. - DX - FALK

1 THE COURT: Just now?

2 A. No, at trial.

3 THE COURT: Oh. Okay. All right.

4 A. Can I show you one more thing, too?

5 THE COURT: If it's consistent with my rulings, you
6 may.

7 A. Yesterday, I suppose to went to court right here.

8 THE COURT: Sir?

9 A. Right here. I never had --

10 THE COURT: Just one second. Have you seen this?

11 MR. MITCHELL: I have not.

12 THE COURT: Then you let him look at it, please.

13 A. See, I want to speak --

14 THE COURT: Hang on. No, no, no, hang on.

15 A. Yes, sir. I've got -- this one, too.

16 THE COURT: Is that something different?

17 A. No, it's all equal up to that, or add up to that
18 right there. I was going to put that on the record.

19 THE COURT: Hang on. Do you have anything else you
20 wanted him to look at?

21 MR. FALK: Your Honor, the issue that he's talking
22 about and had -- and I thought it was a meritorious
23 issue, although it was addressed, it is in the record.
24 His concern is that he was prejudiced by the fact that
25 this trial didn't go off at the same time that there was

1-29-18 GREEN V STATE

CHARLES GREEN, JR. - DX - FALK

1 an order directing that his case be tried by X date; and
2 his case was not tried by X date. It was tried some
3 time later than that. So there was -- there's an order,
4 I guess from Judge Mullen, issuing a speedy trial, and
5 it was --

6 THE COURT: Is there a motion for a speedy trial,
7 or did she say this for scheduling purposes only?

8 MR. FALK: No, it was actually a motion for a
9 speedy trial.

10 THE COURT: Okay.

11 MR. FALK: But at the time, I think he was on bond,
12 and also subject to electronic monitoring. I'm sure
13 that all played in together.

14 THE COURT: Okay.

15 MR. FALK: I just thought that that was a
16 meritorious issue. However, it is addressed in the
17 record that trial counsel brought that to the court's
18 attention at the beginning of the hearing. So, that's
19 why we're not going forward with it.

20 THE COURT: Okay.

21 A. Can I explain something?

22 THE COURT: Now, hang on one minute.

23 MADAM CLERK: Hand it back to them again?

24 THE COURT: Yeah, let him look at them. There's an
25 additional notice and looks like some kind of scheduling

1-29-18 GREEN V STATE

CHARLES GREEN, JR. - DX - FALK

1 document.

2 MR. MITCHELL: Judge, I would note for the record,
3 on Page 13 and 14 of the record of appeals, Ms. Campbell
4 makes a motion to dismiss the case based on Judge
5 McDonald's order for a date certain trial. The judge
6 dismisses -- does not grant her motion to dismiss the
7 case.

8 THE COURT: Did this case go up on appeal?

9 MR. MITCHELL: The issue? Not --

10 THE COURT: That would be an appealable issue,
11 wouldn't it?

12 MR. FALK: It would be an appealable issue, and we
13 could talk to Mr. Tripp, and he said that he chose the
14 issue that he wanted to raise.

15 THE COURT: What I'm saying, though --

16 MR. FALK: Yes, yes, clearly, yes.

17 THE COURT: -- if trial counsel raised it, and
18 judge denied it, then that would be a question of law
19 for the appellate court, not for a PCR court. Is that
20 correct?

21 MR. FALK: Yes, your Honor, I'm sorry. From that
22 point of view, yes, it is a --

23 THE COURT: Okay. All right. But you said that
24 issue is covered in the record?

25 MR. FALK: Yes, your Honor.

1-29-18 GREEN V STATE

CHARLES GREEN, JR. - DX - FALK

1 THE COURT: Do you have copies of those?

2 APPLICANT GREEN: Yes, sir.

3 THE COURT: You do have copies?

4 APPLICANT GREEN: Yeah, I got more copies.

5 THE COURT: All right. Let's make these court
6 exhibits from the applicant himself with regard to his
7 speedy trial allegation.

8 DOCUMENTS IDENTIFIED AS (1) NOTEBOOK

9 SUMMARY LISTING; (2) HANDWRITTEN

10 COURT ORDER DATED 9-17-2012;

11 (3) MOTION FOR SPEEDY TRIAL

12 MARKED COURT'S EXHIBIT NUMBER 1.

13 THE COURT: Okay, sir.

14 APPLICANT GREEN: Can I say something?

15 THE COURT: Now you can, as long as it's consistent
16 with my ruling. If not, I'm going to stop you. Go
17 ahead. I'm not saying I'm going to, I'm saying it's got
18 to be consistent with what I ruled. Go ahead.

19 APPLICANT GREEN: In -- I feel like I was
20 prejudiced because, actually, the speedy trial, that's
21 the first time I saw Ms. Campbell, when she came,
22 because I was in jail. I was sick for a whole year in
23 the county jail. And the first time I seen her, I want
24 to get out of jail, so, and the bond was \$175,000.00,
25 and I couldn't make bond. So I was like -- I wanting to

1-29-18 GREEN V STATE

CHARLES GREEN, JR. - DX - FALK

1 go to the doctor. So I came to her, I said we gonna
2 file for a speedy trial to try to get some relief or get
3 out of jail or something.

4 So me and her -- that's the first time I seen her.
5 We filed the speedy trial. So we went up, we re-visit,
6 and the judge gave a set date for my case to be tried
7 September 17. So we went up to trial, but they couldn't
8 take me to trial, so I got out of jail. But in the
9 order, she wrote down to the hearing, pertaining to this
10 hearing, there's a matter that -- the witness stay away
11 from -- stay away from everybody. I followed everything
12 they told me to do, all the orders. And the judge
13 supposed to say that the case would be tried in two
14 months. I supposed to went to trial September 17 was my
15 first trial. They missed it, they couldn't take me. So
16 the judge ruled the order and say the defendant must be
17 tried by conclusion of November 26, 2012 terms of
18 General Sessions Court.

19 Well, 2012 came around, for November came around,
20 my lawyer was not even present in court, and she didn't
21 even take me to court to even get tried. And she took
22 -- it took -- she had me going for a whole year just
23 paying the bond, all this extra money for a whole year.
24 If she had took me to court on November 26, 2012, the
25 judge probably wouldn't have dismissed it. He would've

1-29-18 GREEN V STATE - CHARLES GREEN, JR. - CX - MITCHELL

1 probably said you know what, I'm going to give you
2 thirty more days to take Mr. Green to trial; not I'm
3 going to go dismiss the case. She never give me the
4 opportunity. She just kept me paying this money for a
5 whole year, and took me to trial a year later and gave
6 me all this time. So they never gave me no opportunity.
7 So the judge probably would have been in my favor, or in
8 her -- their favor, but I never got the opportunity.
9 You know, so. And if they got an extension, the
10 prosecutor asked for extension, and they got an
11 extension, that was fixing to give them November 26,
12 2012. And my kids never heard 'til a year later.

13 THE COURT: Thank you, sir. Anything further?

14 APPLICANT GREEN: That's it.

15 THE COURT: All right.

16 APPLICANT GREEN: Because I saw a case that he said
17 thirty more days the case would be dismissed. I was
18 like, dog, that could've been me.

19 THE COURT: Well, okay. Mr. Falk, any other
20 questions?

21 MR. FALK: No further questions.

22 THE COURT: Cross-examination.

23 MR. MITCHELL: Briefly, your Honor.

24 APPLICANT CHARLES GREEN, CROSS-
25 EXAMINATION BY MR. MITCHELL:

1-29-18 GREEN V STATE - CHARLES GREEN, JR. - CX - MITCHELL

1 Q. Mr. Green, just a couple questions. You said that
2 you told your counsel to contact Ms. Thomas as a witness
3 in this case?

4 A. She wrote a statement. She -- she gave a statement
5 to the police.

6 Q. Okay. Did you guys talk about her coming to
7 testify?

8 A. That would've been the logic [sic] thing to do.

9 Q. I appreciate that answer, but my question is, did
10 you guys talk about her coming to testify?

11 A. Naw, me and -- we never really talked like that.

12 Q. Okay. I guess the next question would be in
13 regards to the evidence in the case, the Grand Marquis
14 that was shown on surveillance video, was that your car?

15 A. No.

16 Q. Was that Ms. Thomas' car?

17 A. Yes..

18 Q. Okay. Were you guys riding in it that day?

19 A. I mean, that's our car. That's my girlfriend.

20 Q. Okay. And when the police found the car, did they
21 find it at your residence or at your girlfriend's
22 residence?

23 A. My girlfriend.

24 Q. Okay.

25 MR. MITCHELL: That's all the questions that I

1-29-18 GREEN V STATE - BY THE COURT

1 have.

2 BY THE COURT:

3 APPLICANT GREEN: Can I say something? I was --

4 THE COURT: No, sir. No, you've got to answer the
5 questions.

6 APPLICANT GREEN: Oh, yeah.

7 THE COURT: Mr. Falk, any additional re-direct
8 after that?

9 MR. FALK: No re-direct.

10 THE COURT: Thank you, sir. You may step down.
11 Any additional witnesses, Mr. Falk?

12 MR. FALK: I thought -- he was here just a few
13 minutes ago.

14 THE COURT: Okay.

15 MR. FALK: I think we ought to call Mr. Tripp, the
16 appellate defense.

17 MR. CORY FLEMING: He actually told me as he was
18 leaving that he was *off the hook*, so he was going. Just
19 FYI. I believe he thought he was not going to be
20 needed.

21 THE COURT: He's under subpoena. Call him back.
22 Is he under subpoena?

23 MR. FALK: He is, Judge.

24 THE COURT: Call him back.

25 MR. MITCHELL: Ms. Campbell's going to give him a

1-29-18 GREEN V STATE - BY THE COURT

1 call.

2 THE COURT: I'd do it right now, if you don't mind,
3 please.

4 TRASI CAMPBELL: I'm sending him a message right
5 now.

6 THE COURT: Oh. Thank you so much.

7 MS. CAMPBELL: If it please the Court, I have sent
8 Mr. Tripp a text message, and I will also step outside
9 and telephone him.

10 THE COURT: Thank you so much.

11 TRASI CAMPBELL: Sure.

12 THE COURT: Unless you object, Mr. Falk, do you
13 have objection to me checking with the State and see if
14 they have any witnesses?

15 MR. FALK: Not at all. We can do this out of
16 order. In fact, if we can bring him in -- come back at
17 another time this afternoon.

18 THE COURT: All right. Thank you, sir.

19 MR. MITCHELL: We have no witnesses.

20 THE COURT: No witnesses?

21 MR. MITCHELL: No, your Honor.

22 THE COURT: All right. We will stand down for the
23 time being, until we find out what's going on with the
24 appellate defense.

25 MR. FALK: Thank you.

1-29-18 GREEN V STATE - BY THE COURT

1 TRASI CAMPBELL: May it please the Court?

2 THE COURT: Yes, ma'am.

3 TRASI CAMPBELL: I spoke to Mr. Tripp on the phone.
4 He is at the office. He says five minutes he will be
5 right here.

6 THE COURT: Very good. Thank you so much for doing
7 that.

8 TRASI CAMPBELL: Um-hmm.

9 OFF THE RECORD.

10 BACK ON THE RECORD.

11 THE COURT: Let me ask you gentlemen something
12 while we're waiting. Do you agree, Mr. Saville [sic],
13 that the statement of Ms. Thomas that was admitted into
14 evidence, the written statement, would raise the issue
15 of whether or not these alleged victims were trying to
16 rob this gentleman?

17 MR. MITCHELL: To a certain extent, I do, Judge.

18 THE COURT: Sorry?

19 MR. MITCHELL: I do.

20 THE COURT: And if you look at Page 190/154 of the
21 record on appeal, it his charge to the jury, Judge
22 Kinnard says in the second -- first full paragraph:

23 *All right, I'm skipping assault and*
24 *battery in the first degree.*

25 And you say:

1-29-18 GREEN V STATE - BY THE COURT

1 *Why is he doing that?*

2 And he says:

3 *Bottom line, assault and battery first*
4 *degree requires injury to a person to occur*
5 *while a violent crime is being committed,*
6 *like robbery or burglary, or something like*
7 *that.*

8 I mean, do you think that's relevant here and
9 material here, also, with the -- did he raised a self-
10 defense charge? Was there a self-defense request by
11 trial counsel?

12 MR. MITCHELL: I don't believe there was a charge,
13 your Honor. If you'll give me a moment to consult my
14 notes.

15 Based on my understanding of the charge conference,
16 your Honor, Page 150 to 152.

17 THE COURT: What is it?

18 MR. MITCHELL: Page 150 to 152.

19 THE COURT: Okay.

20 MR. MITCHELL: Charge conference. I do not see
21 where -- well, I take that back, your Honor. Page 154,
22 the defendant asks for a self-defense charge, and judge
23 denies the request.

24 THE COURT: He did deny it?

25 MR. MITCHELL: Yes, sir.

1-29-18 GREEN V STATE - BY THE COURT

1 THE COURT: What impact do you think, based on if
2 Ms. Thomas had testified consistent with her statement,
3 that it would have had on the issue of self-defense
4 being charged to the jury?

5 MR. MITCHELL: Had she testified, I still don't
6 know if it would be enough to give the self-defense
7 charge in, your Honor.

8 THE COURT: They were robbing him at gunpoint?

9 MR. MITCHELL: Besides her actual -- her actual
10 statement, I don't think there was anything else to
11 corroborate. I mean, obviously, her testimony of her
12 testifying at trial, but anything besides her
13 corroborating it, no shell casings, no guns found.

14 THE COURT: Well, if there's any evidence in the
15 record, the trial judge is required, as a matter of law,
16 required to charge what the record would present to the
17 jury, right?

18 MR. MITCHELL: Yes.

19 THE COURT: On what the evidence is presented in
20 the case that would be appropriate to the jury.

21 MR. MITCHELL: Absolutely. Yes, sir.

22 THE COURT: So my concern is, at first, I will note
23 for the record that Ms. Thomas is not here to testify,
24 and it's the burden of the applicant to prove this case.
25 She's not here. But we do, at a minimum, have a prior

1-29-18 GREEN V STATE - BY THE COURT

1 written statement, which is part of the record in this
2 case, and it gives me some concern that she was not
3 called as a witness in this case. And I know that trial
4 counsel said it was a matter of strategy; that she's not
5 credible.

6 MR. MITCHELL: And I would also note -- I don't
7 mean to interrupt you, Judge -- that trial counsel --
8 trial counsel did testify that, if my memory serves me,
9 her investigator attempted to subpoena Ms. Thomas.

10 THE COURT: Say that again?

11 MR. MITCHELL: Trial counsel's investigator
12 attempted to subpoena Ms. Thomas, but was --

13 THE COURT: Attempted to subpoena her, but there
14 was no request for a continuance because they couldn't
15 get her. That would be the second step in that process.
16 Do you not agree?

17 MR. MITCHELL: I agree with that, your Honor.

18 THE COURT: Okay. I may ask Mr. Falk and you to
19 brief me further on that, that that's a consideration.
20 Okay?

21 MR. MITCHELL: Absolutely.

22 THE COURT: All right. Thank you. All right.
23 Come around, please.

24 MADAM CLERK: Can you place your left hand on the
25 Bible, and raise your right hand. Do you solemnly swear

1-29-18 GREEN V STATE - BENJAMIN JOHN TRIPP - DX - FALK

1 or affirm to truthfully answer all questions asked of
2 you by this court, so help you God?

3 BENJAMIN JOHN TRIPP: I do.

4 BENJAMIN TRIPP, DIRECT

5 EXAMINATION, BY MR. FALK:

6 Q. Can you please state your name.

7 A. Benjamin John Tripp.

8 Q. And how did you become associated with my client in
9 this case?

10 A. I was assigned this case by the Office of Appellate
11 Defense.

12 Q. So you were the one who wrote the appeal in this
13 case?

14 A. That's correct.

15 Q. And this was a merits brief. Is that correct?

16 A. That's correct.

17 Q. As opposed to an *Anders* brief?

18 A. Right.

19 Q. How did you go about selecting the issues to raise
20 on appeal?

21 A. Same practice every time. I review the transcript
22 and any exhibits or other evidence entered into the
23 record, and decide whether one or more arguments exist
24 that would be worthwhile to take up on appeal.

25 Q. And I know this might be catching you a little

1-29-18 GREEN V STATE - BENJAMIN JOHN TRIPP - DX - FALK

1 cold, but do you recall -- and you reviewed the trial
2 transcript. Is that correct?

3 A. That's correct.

4 Q. All right. Do you recall an issue coming up as far
5 as a speedy trial motion that was made, and a motion to
6 dismiss that was made at the beginning of this trial?

7 A. Not specifically.

8 MR. FALK: May I approach?

9 THE COURT: Yes, sir.

10 MR. FALK: 13 and 14 are the transcript, right?

11 MR. MITCHELL: Yeah. Do you have a copy of it?

12 Just for the record, your Honor, 13 and 14 are the
13 actual trial transcript. There's a trial transcript on
14 the record of appeal as well.

15 MR. FALK: So this is probably not in the record --
16 I don't believe it's --

17 THE COURT: Oh, it's not in the record on appeal?
18 I gotcha. Okay.

19 BY MR. FALK:

20 Q. So I'm going to show you a page from the trial
21 transcript, Pages 13 and 14. If you could just sort of
22 review that.

23 A. I've reviewed them, Counsel.

24 Q. Does this give you any kind of recollection of when
25 you reviewed the transcript originally?

1-29-18 GREEN V STATE - BENJAMIN JOHN TRIPP - DX - FALK

1 A. Yes.

2 Q. And so, those pages I showed you, can you just
3 summarize what was going on there? There was a motion
4 to dismiss?

5 A. Right. In the middle of Page 14. Bear with me one
6 second. I apologize. In the middle of Page 13, towards
7 the end, a defense motion to dismiss the case for an
8 alleged failure to -- failure to comply with a motion
9 about a schedule.

10 Q. And the -- obviously, since we went to trial, the
11 motion to dismiss was denied?

12 A. Correct.

13 Q. Would that have been an issue you would have
14 considered on appeal?

15 A. I would've read it and thought about it, yes.

16 Q. So how did you select the issue that -- what issue
17 did you raise on appeal?

18 A. The issue I selected was that the trial judge did
19 not charge self-defense as the evidence required.

20 Q. And let me just -- as far as the motion to dismiss,
21 provided that was renewed, and provided trial counsel
22 made a motion to renew all objections during his
23 directed verdict motion, that would be a preserved
24 issue; would it not? I mean, that's -- I'm just saying,
25 do you -- do you see an obvious issue preservation error

1-29-18 GREEN V STATE - BENJAMIN JOHN TRIPP - DX - FALK

1 with --

2 A. No, there's no issue of preservation error.

3 Q. Okay.

4 A. That I'm seeing right now.

5 Q. And is there sort of a, we'll call it, a strategy
6 decision to not include this issue on appeal?

7 A. Definitely. As far as I can tell from the
8 transcript and the exhibits in the record, or the
9 filings in the case, number one, my understanding of
10 this order from the judge was that it doesn't discuss
11 dismissal of the case as a remedy for failure to comply
12 with the order. And I would've specifically researched
13 for myself what the remedy is for a violation of a right
14 to a speedy trial, which I couldn't tell you the case,
15 it's just a legal matter or a rule of law that I'm
16 pretty certain would've just said the remedy is not to
17 dismiss the charge; it's something along the lines of
18 releasing the person from custody. It would take
19 something in addition to have a charge thrown out
20 besides a mere failure to meet a deadline.

21 Q. I think that a case under the *Eighth Amendment* is
22 *Baker versus Wingo*. And one of the issues there is
23 whether or not there is a -- in order to be agreed by a
24 speed -- by a violation of speedy trial right, you've
25 got to show prejudice. One of the grounds for -- one of

1-29-18 GREEN V STATE - BENJAMIN JOHN TRIPP - DX - FALK

1 the issues for prejudice would be lack of having
2 witnesses available. Is that sort of your recollection
3 of the law?

4 A. If you're telling me that's what that case is,
5 yeah, I think that would be an arguable grounds for
6 prejudice.

7 MR. FALK: I have no further questions.

8 THE COURT: Cross-examination.

9 MR. MITCHELL: Just briefly, Judge.

10 BENJAMIN TRIPP, CROSS-

11 EXAMINATION BY MR. MITCHELL:

12 Q. Mr. Alexander --- pardon me, Mr. Tripp. I ---
13 apologize. After your review of the actual documents,
14 Page 13 through 14, is it your understanding that it was
15 a bond order, or what type of order was it?

16 A. From what I can tell, in the transcript at the top
17 of Page 14, it says bond paperwork.

18 Q. Okay. And the issue on appeal, what level of
19 discretion does the Court of Appeals have in regards --
20 pardon me. What level of discretion does the trial
21 court have when making a ruling on those types of
22 issues, in order for the Court of Appeals to overturn?
23 Is it abuse of discretion, or?

24 A. I think you'd have to know specifically what the
25 argument is. If it was something -- if you were making

1-29-18 GREEN V STATE - BENJAMIN JOHN TRIPP - DX - FALK

1 a constitutional argument, some kind of due process
2 argument, you may have a different standard of review
3 than another issue that could be abuse of discretion.

4 Q. I heard you testify that it probably wasn't a
5 meritorious issue, correct? Or no? Did I hear you
6 testify correctly that it was a meritorious issue, or
7 no?

8 A. That arguing that the prejudice prong is fulfilled
9 by being unable to produce helpful witnesses?

10 Q. The portion about the judge -- the counsel making
11 a motion to dismiss based on the State did not --
12 proceeding to trial, pursuant to the judge's order, and
13 you appealing that motion because the judge denied the
14 motion to dismiss, would that have been retained as a
15 meritorious issue, or no?

16 A. No. Not -- not from what I can recall, after
17 looking at the transcript and knowing my practice of
18 looking up that issue specifically.

19 MR. MITCHELL: Okay. Thank you, Mr. Tripp.

20 THE COURT: May this witness be excused, or do you
21 have any other questions?

22 MR. FALK: I have no further questions, your Honor.

23 THE COURT: Thank you, sir. You are excused. Any
24 additional witnesses?

25 MR. FALK: No, your Honor.

1-29-18 GREEN V STATE - RULING

1 THE COURT: Any from the State?

2 MR. MITCHELL: I have none, your Honor.

3 RULING:

4 THE COURT: All right. Let me go over something.
5 On the grounds that the counsel failed to object to
6 prejudicial hearsay, the petition for post-conviction
7 relief is denied.

8 First, the reference Page 60, I find at Lines 8
9 through 10, it's explained by her as legitimate trial
10 strategy. Page 78, it's hearsay, but it doesn't -- I
11 don't think it rises to the level of such prejudice that
12 it would change the outcome of this case, and I think
13 from what I've heard, there's other evidence in the
14 record supporting this as well.

15 Now, Mr. Falk, I could be incorrect on that, but I
16 think he'd already testified at this juncture, that some
17 type of information is already in the record. Is that
18 not right? Is none of that correct?

19 MR. FALK: Yes, your Honor.

20 THE COURT: All right, sir. Page 85. That was the
21 I.D. by the investigator. It's not prejudicial. It's
22 just hearsay, but it's not so prejudicial because it had
23 already been -- that same testimony was in the record
24 again by the victim.

25 Page 93. It is hearsay, but it's helpful to the

1-29-18 GREEN V STATE - RULING

1 defendant, and not harmful.

2 Now, I have to tell you, Mr. Saville [sic], I am
3 concerned that this failure to call Ms. Thomas and the
4 judge's refusal to charge on self-defense is concerning
5 to me. Number one, I don't think that there is a speedy
6 trial issue here, quite frankly, Mr. Falk, because to
7 the extent there is, your applicant has not met his
8 burden of proof. You've got to show the reason for the
9 delay. You've got to show that that delay caused you
10 prejudice by a loss of evidence or witness testimony, et
11 cetera, et cetera. In this case, that's not what was
12 going on. They tried to find Ms. Thomas. The witness
13 himself said she was in the courtroom. The trial
14 counsel said I didn't want to call her because I didn't
15 feel like she was credible.

16 My concern is that if she would have testified
17 consistently with her written statement to the police
18 that this was a self-defense situation, that matter
19 would've been charged to the jury. There's already a
20 lesser-included finding from the jury of, what was it,
21 assault and battery of a high and aggravated nature, as
22 opposed to attempted murder?

23 MR. FALK: Yes, your Honor.

24 THE COURT: So the jury was leading that direction.
25 The questions I have, I'm going to ask you all to give

1-29-18 GREEN V STATE - RULING

1 me some further briefing on, if you would. Number one,
2 whether the mere introduction of Ashley Thomas'
3 statement to police would be sufficient for the
4 applicant to meet his burden of proof for post-
5 conviction relief. In this case, on the issue of
6 whether counsel was deficient in failing to call her for
7 a witness, or was her actual testimony here required,
8 which is the normal case. And whether or not failure to
9 call Ms. Thomas as a witness was deficient and
10 prejudicial in that it resulted in the lack of the self-
11 defense charge by Judge Kinnard. And to the extent that
12 issue is not raised, it is argued, I'm going to amend
13 the application to include the failure to call Ashley
14 Thomas as a witness on the grounds of ineffective
15 assistance of counsel.

16 The remaining allegations, as I have earlier -- are
17 denied as being specious. And the prejudice or the
18 hearsay is denied. Okay.

19 All right, gentlemen, give me some time frames for
20 you to go and get that information to me. From the
21 State? All you guys are busy, so you can give me an
22 idea so I can make my notes accordingly.

23 MR. MITCHELL: If I could get thirty days, that
24 would be fine.

25 MR. FALK: I can --

1-29-18 GREEN V STATE - RULING

1 THE COURT: Thirty days?

2 MR. FALK: Yeah.

3 THE COURT: All right. We'll recess.

END PROCEEDING 1:25 P.M.

1-29-18 GREEN V STATECERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

JANUARY 29, 2018 TRANSCRIPT OF PCR HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing January 29, 2018 Transcript of PCR Hearing is a true and accurate record of the proceedings had and exhibits admitted on said date, in the case of Charles Green, Jr. versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2015-CP-07-02386; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/mailing is prohibited.

Witness my signature August 21, 2018.



Wanda H. Rowe, CVR-M
Official Court Reporter



Date 4. 7-2011

Page No. _____

STATEMENT OF:

Name:

Ashley Thomas

DOB:

9-18-85

H:

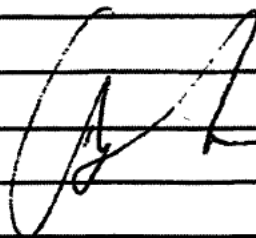
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SSN:

[REDACTED]

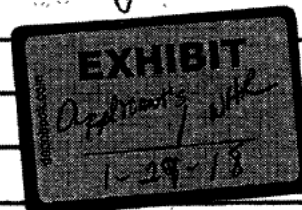
W:

I Ashley witnessed Shannon and Cliff take Cj money from off the ground. When Cj proceeded to get his money back the two men stuffed the 90 dollars in their pockets. Cj ask for his money back they say no. Cliff then told Shannon to get his gun. Shannon got the gun pointed it at Cj. Then Cliff got the gun and did the same. Shannon then got the gun back from Cj and shoot twice. Neighbors heard the gun shots. Cj walked off shocked. They stole his money and walked off. Cj then asked them for the money back. ~~the~~ They proceeded to walk to Fiddion and laugh at Cj. They was waving the gun saying you aint getting nothing back.



Charles Thomas v State

2015-02-07-023816

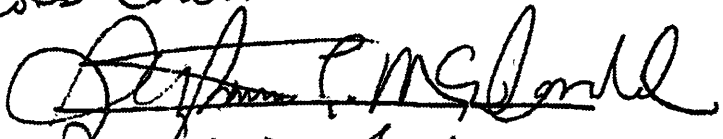


12 p1751K

	1	SC 14th Circuit Administra	\$12.00	2011-GS-07-850		
	2	Monitoring Fees	\$68.00	2011-GS-07-850		
Receipt		04/30/2013 1002	\$70.00	Money Order	04/30/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$9.00	2011-GS-07-850		
	2	Monitoring Fees	\$61.00	2011-GS-07-850		
Receipt		04/25/2013 974	\$160.00	Money Order	04/25/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$15.00	2011-GS-07-850		
	2	Monitoring Fees	\$145.00	2011-GS-07-850		
Receipt		04/12/2013 942	\$85.00	Money Order	04/12/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$5.25	2011-GS-07-850		
	2	Monitoring Fees	\$79.75	2011-GS-07-850		
Receipt		04/12/2013 934	\$80.00	Money Order	04/12/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	Monitoring Fees	\$80.00	2011-GS-07-850		
Receipt		03/29/2013 907	\$150.00	Money Order	03/29/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	Monitoring Fees	\$150.00	2011-GS-07-850		
Receipt		03/29/2013 898	\$100.00	Money Order	03/29/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$11.00	2011-GS-07-850		
	2	Monitoring Fees	\$89.00	2011-GS-07-850		
Receipt		03/14/2013 866	\$70.00	Money Order	03/14/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$11.00	2011-GS-07-850		
	2	Monitoring Fees	\$59.00	2011-GS-07-850		
Receipt		02/26/2013 828	\$70.00	Money Order	02/26/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	Monitoring Fees	\$70.00	2011-GS-07-850		
Receipt		02/15/2013 808	\$71.00	Money Order	02/15/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$5.75	2011-GS-07-850		
	2	Monitoring Fees	\$65.25	2011-GS-07-850		
Receipt		02/08/2013 793	\$70.00	Money Order	02/08/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$8.25	2011-GS-07-850		
	2	Monitoring Fees	\$61.75	2011-GS-07-850		
Receipt		02/01/2013 780	\$70.00	Debit/Credit Card	02/01/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$9.00	2011-GS-07-850		
	2	Monitoring Fees	\$61.00	2011-GS-07-850		
Receipt		01/22/2013 755	\$70.00	Money Order	01/22/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$5.25	2011-GS-07-850		
	2	Monitoring Fees	\$64.75	2011-GS-07-850		
Receipt		01/15/2013 746	\$70.00	Money Order	01/15/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		
	1	SC 14th Circuit Administra	\$5.25	2011-GS-07-850		
	2	Monitoring Fees	\$64.75	2011-GS-07-850		
Receipt		01/08/2013 728	\$70.00	Money Order	01/08/2013	UnModified
Item:		Applied To:	Amount:	Docket No:		



Subsequent to a hearing in this matter, and
 Based upon this Court's determination that
 the Defendant should be subject to
 Electronic Monitoring - This Court
 hereby Orders that the Defendant obtain
 the services of offender management services
 as a condition of his O.R. BOND.
 Δ has an exclusion zone of Murray
 Drive, Burton S.C. Additionally, the
 Defendant is to have no contact with
 the victim or witnesses in this case.
 Defendant must be tried by ^{conclusion of} November 26, 2012
 term of General Sessions Court.


 Presiding Judge

- 9-17, 2012
 Beaufort SC

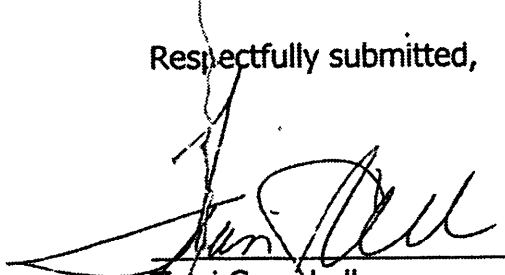
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)
STATE OF SOUTH CAROLINA,) WARRANT NOS. J338412, M056735, 58, 61
versus)
CHARLES GREEN,) MOTION FOR SPEEDY TRIAL
Defendant.)

2012 APR 19 PM 12:00
BEAUFORT COUNTY, SC.
CLERK OF COURT

The Defendant above named, through the undersigned attorney,
would show unto this Honorable Court:

That the Defendant is informed and believes to be entitled to a
speedy trial and hereby demands such, as provided in the Sixth Amendment to
the United States Constitution, Article 1, Section 9, of the South Carolina
Constitution and Section 17-23-90, of the South Carolina Code of laws as
Amended in 1976, and in the alternative moves to be discharged from
imprisonment.

Respectfully submitted,


Traci Campbell
Chief Public Defender

Beaufort, South Carolina
4/19, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Charles Green, Jr., #320693,

2015-CP-07-2386

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

2018 JUN 18 PM 12:07
JEREMY ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed on October 1, 2015 Charles Green, Jr (Applicant). Respondent made its Return on or about May 13, 2016. An evidentiary hearing into the matter was convened on January 29, 2018, at the Beaufort County Courthouse in Beaufort, South Carolina. Applicant was present and represented by James K. Falk, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's trial counsel Trasi Campbell, Esquire testified as well as Applicant's Appellate Counsel Benjamin Tripp, Esquire. This Court had before it a copy of the records of the Beaufort County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and a copy of Applicant's appellate records After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. In May 2011, the Beaufort County Grand Jury indicted Applicant for one count of Attempted Murder, one count of Possession of a Weapon During a Violent Crime, one count of Possession of a Firearm by a Person Convicted of a Violent Crime (2011-GS-07-0851, -0852, -0853). Chief Public Defender Trasi Campbell, Esquire, represented Applicant. On November 18, 2013, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted for one count of Possession of a Weapon During a Violent Crime and one count of Possession of a Firearm by a Person Convicted of a Violent Crime. The Applicant was found guilty to a lesser charge of Assault and Battery of a High and Aggravated Nature. The Honorable J. Earnest Kinard, Jr. sentenced the Applicant to confinement for fifteen years for the count of Assault and Battery of a High and Aggravated Nature, five years for the count of Possession of a Weapon During a Violent Crime, and two years for the count of Possession of a Firearm by a Person Convicted of a Violent Crime.

Applicant filed a timely notice of appeal. Benjamin Tripp, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Green, Op. No. 2015-UP-458 (filed on September 16, 2015). The Remittitur was issued on October 27, 2015.

FACTUAL HISTORY

On April 6, 2011, Clifton Henry ("Henry") suffered shotgun pellet wounds to his left hip, thigh, and arm. (R. pp. 15-18). Luckily, the wounds were superficial, not appearing to impact bones or vital organs. (R. pp. 15-18). The shooting occurred at "a small shopping complex," consisting of

a Food Lion, a Chinese restaurant, and other stores. (R. p. 27). Shotgun wadding was recovered at the scene. (R. pp. 31-33).

In April 2011, Henry lived on Murray Drive in the Burton area of Beaufort County. On April 6, 2011, Henry went to his friend Channon Preston's ("Preston") house, also on Murray Drive. (R. p. 60). As Henry and Preston sat outside, Applicant, also a resident of Murray Drive, arrived with his girlfriend, Ashley Thomas ("Thomas") in a gray Grand Marquis. (R. pp. 60-61; pp. 85-86). The couple went inside the house then Applicant came back out. According to Preston:

...[Applicant] was telling me and Channon he had just spent \$700. So Channon said, what did you spend it on? And he never said. Channon said, well, you better give us some of that money. [Applicant] throw [sic] two \$20 bills on the table and said, you two n*****s take that.

(R. p. 60). Henry and Preston took the money and went to Food Lion. (R. p. 60). At Food Lion, Applicant encountered Applicant and Thomas again:

And [Applicant] came up to us, he was -- tears was coming out of his eye. [Applicant] say, I just been playing, man, let me get my money back. So we both [Preston and Henry] reach in our pocket and hand him \$20 back. And [Applicant] walk off. And when [Applicant] walk off, he went to the car, sat in the car, and spin around with the gun and shot the gun. The pellets catch me in my quarters and my arm. And [Applicant] drove off, say, now y'all so-and-so laugh at that.

(R. pp. 62-64). Henry reported Applicant used a double-barrel sawed-off shotgun retrieved from the passenger side floorboard. (R. p. 65). Henry denied being armed at the Food Lion or at Murray Drive. (R. p. 65). Henry also denied any altercation between himself and Applicant that day prior to the shooting. (R. p. 66). Henry identified Applicant as his assailant from a photo lineup and in court. (R. p. 68; pp. 86-88). Surveillance footage from the Chinese restaurant showed:

...[Applicant] get out of the passenger's side of the vehicle as [Victim and Preston] had described, walk over to where they were at, walk back – and what you are talking about is just a matter of a few feet. It's not a huge distance. It's very short distance. Go back to the vehicle, he turns around again, and then gets back in the vehicle and the vehicle flees... .

(R. pp. 91-92).

When officers took Applicant into custody, Thomas shouted, "He didn't start it, they shot at him first." (R. p. 93). Applicant was interviewed but maintained he knew nothing of the incident. (R. p. 94). Applicant did not testify at trial.

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel by Trial Counsel and Appellate Defense"
 - a. "Perjury and Prejudice"
 - b. "Counsel failed to object to comment by Judge and prosecution these indictment "
 - c. "Appellant attorney failing raise plain reversible error under 5th Amendment"
2. "Prosecutorial misconduct"
 - a. "Written statement's not the same as testimony"
 - b. "Prosecution directing the jury"
3. "5th Amendment (speedy trial)"
 - a. "Direct Order by judge violation of right to fair trial"

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified Ashley Thomas was his girlfriend. He testified during the incident Ashley was with him and could have testified regarding the events that took place and that he was acting in self-defense. Applicant testified he told Trial Counsel about Ashley and he thought the reasonable thing for Trial Counsel to do was to call Ashley to testify. He testified he thought Ashley's testimony would have convinced the jury he was innocent of the charges. Applicant

also testified he wanted a speedy trial.

On cross-examination, Applicant testified the car on video from the scene of the shooting was Ashley's car.

Trial Counsel's Testimony

Trial Counsel testified Applicant was charged with attempted murder for shooting at Clifton Henry. She testified at the time of the incident Applicant's theory was that he was actually a victim. Trial Counsel testified Channon Preston was a witness to the portion of the ongoing dispute between Applicant and the victim. She testified there was testimony about the dispute and how it related to money. She testified some of the victim's testimony was helpful to Applicant as the jury found him not guilty of attempted murder. Trial Counsel testified the purpose of eliciting hearsay testimony in this case was to present an opportunity to attack the creditability of a witness from a different vintage point. She testified Investigator Fraser's testimony at trial about what Applicant's girlfriend, Ashley Thomas said when Applicant was arrested was helpful to Applicant's case. Trial Counsel testified Ashley Thomas gave the police a statement regarding the incident Applicant was involved in and the statement was a part of the discovery materials she received from the State. She testified Ashley Thomas' statement purported to allege that the victim along with another individual shot at Applicant first and Applicant returned fire in self-defense. Trial Counsel testified that Ms. Thomas had a criminal record and credibility problems and those would have been issues if she testified at trial. She testified she also attempted to locate and subpoena Ashley but was unable to locate her. Trial Counsel testified it seemed safer to let Investigator Fraser testify about Ashley's statement instead of having her testify.

On cross-examination, Trial Counsel testified regarding the facts of the case. She testified

the incident involved a card game followed by an argument over money. Trial Counsel testified there was video surveillance from one of the stores where the shooting took place but that people's faces could not be made out. She testified cars were visible in the video though. She testified she cross examined the victim about a statement he had given and the fact that all of them had been drinking. Trial Counsel testified the testimony by Investigator Fraser was the only evidence for self-defense they had.

Appellate Counsel's Testimony

Appellate Counsel testified he represented Applicant on appeal. He testified his practice when handling appeals and deciding which issues to brief is to review the entire record before picking issues. When asked about Applicant's motion to dismiss his case during pretrial, Appellate Counsel testified he would have read that portion of the transcript as well to determine if it was an issue he needed to brief on appeal. He testified the issue he decided to brief was that the trial court erred by refusing to charge self-defense as he believed the evidence required it. Appellate testified his strategy in not appealing the issue regarding Applicant's motion during pretrial to dismiss his charges was because the order Applicant based his motion off of did not include language about dismissing his case just granting him a bond.

On cross-examination, Appellate Counsel testified it was his understanding that the order which Applicant based his motion to dismiss off of at trial was an order for Applicant to have bond if his case was not heard by a certain time not an order to have his charges dismissed if his case was not heard. He testified the issue of a speedy trial was not meritorious.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the

witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. These credibility findings have been applied to the Court's findings and conclusions set forth below. Additionally, prior to testimony being taken, Applicant proceeded on only the following grounds for relief as additional grounds were disallowed by this court over Applicant's objections.

Failure to Object to Hearsay testimony

Applicant alleged Trial Counsel failed to object to prejudicial hearsay testimony during multiple intervals during trial. This Court found Applicant has failed to prove Trial Counsel was ineffective. Concerning the four instances where Applicant alleged prejudicial hearsay, this Court finds the following. First, this Court finds Trial Counsel's reason for not objecting to the victim's testimony during direct examination (ROA p.60, 8-19) was a valid trial strategy as Trial Counsel deemed the testimony to be helpful to Applicant's case. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). Second, this Court finds the testimony in this instance (ROA p.78, 1-25) to not be prejudicial because there was substantial evidence of this matter already in the record and any failure to object was harmless. Third, this Court finds Trial Counsel was not ineffective for not objecting to the Investigator Fraser's testimony during direct examination (ROA p.85, 1-25) because the victim had previously identified Applicant in his testimony. Finally, this Court finds Trial Counsel was not ineffective

for not objecting to the Investigator Fraser's testimony during direct examination (ROA p.93, 1-25) because the testimony elicited was favorable to Applicant.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel objected to these instances of hearsay testimony. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. This allegation is denied and dismissed.

Failure to Call a Witness

Applicant alleges that Trial Counsel was ineffective for failing to call Ashley Thomas (Applicant's girlfriend) as a witness. The South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); see, e.g., Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR. Porter v. State, 368 S.C. 378, 386–87, 629 S.E.2d 353, 358 (2006) (holding no evidence showed counsel's failure to interview a potential witness would have yielded a result different

from that which defendant's counsel believed at the time of the plea; defendant pled guilty in light of the complete information that was available at that time). In this case, Trial Counsel testified at the PCR hearing that Ashley Thomas gave the police a statement regarding the incident Applicant was involved in. Trial Counsel testified this statement was a part of the discovery materials she received from the State. Ashley Thomas' statement purported to allege that the victim along with another individual shot at Applicant first and Applicant returned fire in self-defense. Applicant argues this statement by Ms. Thomas was helpful in proving self-defense. Further, Applicant argues Trial Counsel was ineffective for failing to call Ms. Thomas as a witness at trial and by introducing her statement at the PCR hearing he has satisfied his burden. This Court finds Applicant's argument fails as the statement introduced was hearsay. Ms. Thomas' statement would not have been admitted into evidence at trial as she did not testify.

Notwithstanding, Applicant is unable to prove prejudice because Trial Counsel had a valid trial strategy for not calling Ashley Thomas and the statement if true did not rise to a valid self-defense argument for Applicant. First, Trial Counsel testified at the PCR hearing that Ms. Thomas had a criminal record and credibility problems and those would have been issues if she testified. Here, Trial Counsel articulated a valid trial strategy by choosing not to call Ms. Thomas. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Further, This Court finds Trial Counsel also attempted to locate and subpoena her but was unable to locate her.

Notwithstanding, even if Ms. Thomas' statement was true it did not rise to a valid self-defense argument for Applicant. A defendant must meet four prongs to justify using deadly force in self-defense:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and
- (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 716 S.E.2d 97, 101 (2011) (citing State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489, 493 [1998]). "[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt." Id.

The evidence in this case simply does not support Applicant's claim of self-defense. Applicant fails to meet the first element of self-defense. By all accounts, the victim and the other individual were going into the Food Lion grocery store when Applicant drove up alongside them with a shotgun in the passenger floorboard. It is uncontested that Applicant exited the car and approached the victim and the other individual, demanding money back. It is uncontested that Applicant returned to his car, turned, retrieved a shotgun from the front passenger floorboard, exited the vehicle, and opened fire. See State v. Wigington, 375 S.C. 25, 649 S.E.2d 185 (Ct.

App. 2007) (Where defendant injected himself into verbal argument, removed himself from the argument, then returned with a gun, he was not without fault in bringing on the difficulty). The victim testified that he was unarmed and that there was no altercation; he simply returned Applicant's money as requested. There is no evidence of any weapon other than a shotgun being present at the Food Lion. Because Applicant approached the unarmed victim, Applicant was not without fault in bringing on the difficulty.

As for the second element, belief he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger, again there is no evidence to support a self-defense theory. The only evidence presented was that Applicant armed himself. The testimony established that victim was actually attempting to hide behind the pillar when Applicant pulled the trigger. That the victim had time to assume a defensive position at such close range would in itself seem to negate Applicant's claim that the victim posed a threat. The victim testified that he was unarmed (R. p. 65), he had no prior conflicts with Applicant (R. p. 66), and he never threatened Applicant (R. p. 71). Similarly, absent evidence to support a belief of imminent danger, no evidence exists to support the third element of self-defense. Applicant's comment, "now y'all so-and-so laugh at that," as he drove away indicates that he was not in fear of his own life but rather enjoyed instilling fear in the victim.

As for the final element, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance, again no evidence exists. Applicant had time to return to his car, turn his back, and return to the victim before firing. He safely reached his vehicle and had time to safely retrieve a shotgun. Therefore, it stands to reason that he could have avoided any supposed danger by driving away. Further, the victim had time to hide.

Applicant attempts to construct a self-defense claim from hearsay evidence that his significant other, Ms. Thomas, exclaimed as he was arrested, "He didn't start it, they shot at him first." Even if accepted as evidence, this exclamation does not even identify who "they" are or what incident she is referring to. Even if we assume she was referring to the incident at Food Lion, the argument still fails. It was Applicant who armed himself and sought the victim out, negating the possibility that Applicant was without fault in bringing on the confrontation. Moreover, as Applicant had time to safely return to his car and the victim had time to cringe behind a pillar, it would seem that even Ms. Thomas' hearsay statement would fail to meet the fourth element of self-defense. Accordingly, Applicant has failed to prove Trial Counsel was ineffective as Ms. Thomas' statement was hearsay. Further Trial Counsel articulated a valid trial strategy by not calling her and the statement if true did not rise to a valid self-defense argument for Applicant.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial Counsel called Ashley Thomas to testify. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. This allegation is denied and dismissed.

Ineffective Assistance of Appellate Counsel

Applicant alleges ineffective assistance of appellate counsel in his application. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey,

469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

This Court finds Applicant has failed to establish the requisite deficiency of appellate counsel or prejudice entitling him to relief. First, this Court finds Applicant has failed to show that appellate counsel's performance was deficient, where there is no standard requiring appellate counsel to brief every possible meritorious issue and counsel appropriately raised what he considered to be a stronger, meritorious issues on Applicant's behalf. Second, this Court finds Applicant has failed to establish prejudice, as there is no reasonable likelihood that he would have prevailed on appeal.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 8th day of June, 2018.


 R. LAWTON MCINTOSH
 Presiding Judge
 Fourteenth Judicial Circuit

Anderson, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

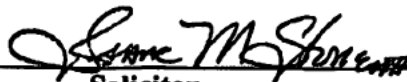
INDICTMENT
2011GS0700851

At a Court of General Sessions, convened on May 19, 2011, the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County on or about April 6, 2011, with malice aforethought, Charles Green did attempt to kill and murder Henry Clifton by means of shooting him with a shotgun, in violation of Section 16-3-29 of the South Carolina Code of Laws (2010), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

WITNESSES

Fraser/ BCSO

ARREST WARRANT NUMBER

M056735

ACTION OF GRAND JURY

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS0700851

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2011

THE STATE

vs.

Charles Green

Indictment for

Attempted Murder

SC Code: 16-03-0029

CDR Code:3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0700852

At a Court of General Sessions, convened on May 19, 2011, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime.

That in Beaufort County, South Carolina, on or about April 6, 2011, the Defendant, Charles Green, did possess a shotgun and/or a firearm or visibly display what appeared to be a shotgun and/or firearm during the commission, or attempted commission, of Attempted Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Fraser/BCSO

ARREST WARRANT NUMBER

M056758

ACTION OF GRAND JURY

True Bill

Rich Wolf
Foreperson of Grand Jury
Date:

MAY 19 2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2011GS0700852

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2011

THE STATE

vs.

Charles Green

Indictment for

Weapons / Poss. weapon during violent crime,

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0700853

At a Court of General Sessions, convened on May 19, 2011, the Grand Jurors of Beaufort County present upon their oath:

Possession of Firearm by person convicted of felony

That in Beaufort County, South Carolina, on or about April 6, 2011, the Defendant, Charles Green, unlawfully did carry about his person a firearm, described as follows: a shotgun; in violation of Section 16-23-20, Code of Laws of South Carolina (1976, as amended).

500

[Handwritten signature]

11/19/13

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Handwritten signature]
Solicitor

WITNESSES

Fraser/BCSO

ARREST WARRANT NUMBER

M056761

ACTION OF GRAND JURY

True Bill

Boyd W. May
Foreperson of Grand Jury
Date: MAY 19 2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2011GS0700853

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2011

THE STATE

vs.

Charles Green

Indictment for

Possession of Firearm by person convicted of
felony

SC Code: 16-23-0500(A)
CDR Code:3434

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOR THE 14th JUDICIAL CIRCUIT
	)	
Charles Green, Jr.	)	
Applicant	)	2015-CP-07-2386
Vs.	)	
State of South Carolina	)	Applicant's Memorandum of Law
Respondent,	)	
	)	

Applicant by counsel submits the following memorandum of law in response to the request by the Honorable R. Lawton McIntosh that counsel brief the issue of whether the PCR court could accept the statement that Ashley Thomas provided to law enforcement in lieu of her live testimony. Specifically Applicant refers to the April 7 2011 statement that was provided trial counsel as part of the State's Rule 5 disclosure.

Applicant is informed and believes that it is within the sound discretion of the PCR Judge whether to accept extrinsic evidence in lieu of a witness's in court testimony. Applicant cites the following authorities in support.

1. S.C. Code § 17-27-80 provides in part... the court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing....
2. A PCR Judge's decision to admit affidavits and depositions in lieu of live witness testimony is within the court's discretion. Simpson v. Moore (S.C. 2006) 367 S.C. 587, 627 S.E.2d 701, abrogated on other grounds, Smalls v State, 2018 WL 736339 (2018). In Simpson the court held that the PCR court did not *abuse its discretion by allowing defendant to introduce over forty depositions and some twenty-two affidavits into evidence in lieu of live testimony; most of the relevant witnesses testified at the post-conviction relief hearing and were cross-examined by the*

State, and the court gave the State the opportunity to submit additional testimony and affidavits countering the evidence presented by defendant. Id 627 S.E.2d at 712.

3. In Becket v State, 278 S.C. 222, 294 S.E.2d 46. (S.C. 1982), the South Carolina Supreme Court held that a PCR judge did not abuse his discretion when he considered an affidavit from the guilty plea hearing judge since sworn affidavits are admissible at post-conviction proceedings in the discretion of the trial judge.

4. Pauling v State, 331 S.C. 606 503 S.E.2d 468 (1998). Defendant Pauling was charged with CSC. In his PCR application he alleged that trial counsel was ineffective for failing to call as a defense witness a triage nurse whose notes indicated that victim stated that her vagina was not penetrated. The triage nurse did not testify at PCR hearing and PCR counsel instead introduced the nurse's triage notes. The State relied on Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995), to assert that by failing to offer the live testimony of nurse, applicant failed to meet its burden of proof. In response the South Carolina Supreme Court stated: *the State misconstrues Glover. In Glover the Court held "[i]n order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence."* Id. 458 S.E.2d at 471. The Court went on to hold that the introduction of the nurse's triage notes was sufficient under Glover. Id.

5. In Rutland v. State, 415 S.C. 570, 785 S.E.2d 350 (2016), the South Carolina Supreme Court reversed the PCR Court's dismissal of Rutland's application. In his PCR application, Rutland alleges that trial counsel was ineffective for failing to impeach the state's witness, Kimberly Kestner, with her prior inconsistent statements. Kestner did not testify at the PCR hearing. The South Carolina Supreme Court held that PCR counsel's introduction of Kestner's

statement to law enforcement, as well as affidavits from individuals attesting to have heard Kestner state the victim was armed at the time of the shooting was sufficient extrinsic proof of her testimony. Id 785 S.E.2d at 353.

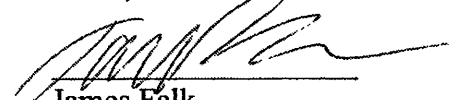
The facts in Rutland are similar to those present at Applicant's evidentiary hearing. Although Thomas was not present to testify at the evidentiary hearing, PCR counsel provided extrinsic evidence of what she would have testified to had she been present. Additionally, even if Thomas had testified at trial the hearing and her live testimony differed from her statement to law enforcement, PCR counsel could have impeached her testimony as a prior inconsistent statement.

Respectfully Submitted,


James K Falk
Attorney for Applicant

CERTIFICATE OF SERVICE

Undersigned certifies that on March 21, 2018 a copy of the above was mailed to DeShawn Mitchell, Esq. at PO Box 11549, Columbia, SC 29211-1549.


James Falk
Counsel for Applicant

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Charles Green, Jr., #320693,

2015-CP-07-2386

Applicant,

**RESPONDENT'S
MEMORDANDUM OF LAW**

v.

State of South Carolina,

Respondent.

This matter is before this Court by way of an application for post-conviction relief filed on October 1, 2015. In Applicant's memorandum of law, Applicant argues that Trial Counsel was ineffective for failing to call Ashley Thomas (Applicant's girlfriend) as a witness. Additionally, Applicant argues by introducing Ms. Thomas' statement given to police at the PCR hearing he has satisfied his burden of proving deficiency and prejudice. However, Applicant has failed to demonstrate Trial Counsel was ineffective and his PCR application should be denied and dismissed. The allegation is discussed in-depth below.

Failure to Call a Witness

The South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); see, e.g., Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). Mere speculation of what a witness' testimony may be is

insufficient to satisfy the burden of showing prejudice in a petition for PCR. Porter v. State, 368 S.C. 378, 386–87, 629 S.E.2d 353, 358 (2006) (holding no evidence showed counsel's failure to interview a potential witness would have yielded a result different from that which defendant's counsel believed at the time of the plea; defendant pled guilty in light of the complete information that was available at that time). In this case, Trial Counsel testified at the PCR hearing that Ashley Thomas gave the police a statement regarding the incident Applicant was involved in. Trial Counsel testified this statement was a part of the discovery materials she received from the State. Ashley Thomas' statement purported to allege that the victim along with another individual shot at Applicant first and Applicant returned fire in self-defense. Applicant argues this statement by Ms. Thomas was helpful in proving self-defense. Further, Applicant argues Trial Counsel was ineffective for failing to call Ms. Thomas as a witness at trial and by introducing her statement he has satisfied his burden. Applicant argument fails as the statement introduced was hearsay. Ms. Thomas' statement would not have been admitted into evidence at trial as she did not testify.

Notwithstanding, Applicant is unable to prove prejudice because Trial Counsel had a valid trial strategy for not calling Ashley Thomas and the statement if true did not rise to a valid self-defense argument for Applicant. First, Trial Counsel testified at the PCR hearing that Ms. Thomas had a criminal record and credibility problems and those would have been issues if she testified. Here, Trial Counsel articulated a valid trial strategy by choosing not to call Ms. Thomas. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and

where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Further, Trial Counsel also attempted to locate and subpoena her but was unable to locate her.

Notwithstanding, even if Ms. Thomas' statement was true it did not rise to a valid self-defense argument for Applicant. A defendant must meet four prongs to justify using deadly force in self-defense:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and
- (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 716 S.E.2d 97, 101 (2011) (citing State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489, 493 [1998]). "[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt." Id.

The evidence in this case simply does not support Applicant's claim of self-defense. Applicant fails to meet the first element of self-defense. By all accounts, the victim and the other individual were going into the Food Lion grocery store when Applicant drove up alongside them with a shotgun in the passenger floorboard. It is uncontested that Applicant exited the car and approached the victim and the other individual, demanding money back. It is uncontested that Applicant returned to his car, turned, retrieved a shotgun from the front passenger floorboard,

exited the vehicle, and opened fire. See State v. Wigington, 375 S.C. 25, 649 S.E.2d 185 (Ct. App. 2007) (Where defendant injected himself into verbal argument, removed himself from the argument, then returned with a gun, he was not without fault in bringing on the difficulty). The victim testified that he was unarmed and that there was no altercation; he simply returned Applicant's money as requested. There is no evidence of any weapon other than a shotgun being present at the Food Lion. Because Applicant approached the unarmed victim, Applicant was not without fault in bringing on the difficulty.

As for the second element, belief he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger, again there is no evidence to support a self-defense theory. The only evidence presented was that Applicant armed himself. The testimony established that victim was actually attempting to hide behind the pillar when Applicant pulled the trigger. That the victim had time to assume a defensive position at such close range would in itself seem to negate Applicant's claim that the victim posed a threat. The victim testified that he was unarmed (R. p. 65), he had no prior conflicts with Applicant (R. p. 66), and he never threatened Applicant (R. p. 71). Similarly, absent evidence to support a belief of imminent danger, no evidence exists to support the third element of self-defense. Applicant's comment, "now y'all so-and-so laugh at that," as he drove away indicates that he was not in fear of his own life but rather enjoyed instilling fear in the victim.

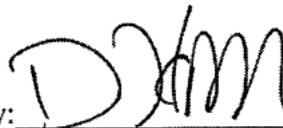
As for the final element, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance, again no evidence exists. Applicant had time to return to his car, turn his back, and return to the victim before firing. He safely reached his vehicle and had time to safely

retrieve a shotgun. Therefore, it stands to reason that he could have avoided any supposed danger by driving away. Further, the victim had time to hide.

Applicant attempts to construct a self-defense claim from hearsay evidence that his significant other, Ms. Thomas, exclaimed as he was arrested, "He didn't start it, they shot at him first." Even if accepted as evidence, this exclamation does not even identify who "they" are or what incident she is referring to. Even if we assume she was referring to the incident at Food Lion, the argument still fails. It was Applicant who armed himself and sought the victim out, negating the possibility that Applicant was without fault in bringing on the confrontation. Moreover, as Applicant had time to safely return to his car and the victim had time to cringe behind a pillar, it would seem that even Ms. Thomas' hearsay statement would fail to meet the fourth element of self-defense. Accordingly, Applicant has failed to prove Trial Counsel was ineffective as Ms. Thomas' statement was hearsay. Further Trial Counsel articulated a valid trial strategy by not calling her and the statement if true did not rise to a valid self-defense argument for Applicant. Moreover, Applicant has failed to show the outcome of his trial would have been different had Trial Counsel called Ms. Thomas to testify. Applicant allegation should be denied and dismissed.

Respectfully submitted,

DESHAWN H. MITCHELL
Assistant Attorney General

By: 

ATTORNEY FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

April 2, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES GREEN, JR.,

APPELLANT

APPELLATE CASE NO. 2013-002526

FINAL BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUES ON APPEAL.....3

STATEMENT OF THE CASE 4

ARGUMENT.....5

CONCLUSION.....8

TABLE OF AUTHORITIES

Cases

State v. Burton, 356 S.C. 259, 589 S.E.2d 6 (2003)	7
State v. Frank, 262 S.C. 526, 205 S.E.2d 827 (1974)	7
State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989)	6
State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993)	7
State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993)	7
State v. Taylor, 261 S.C. 437, 200 S.E.2d 387 (1973)	7
State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998)	6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court committed reversible error by refusing to charge the jury on self-defense where testimony was presented that Appellant encountered two armed men who were repeatedly antagonistic towards him and who had his money and where Appellant's girlfriend made a statement to police that although Appellant shot at one of the men, the two men shot at Appellant first.

STATEMENT OF THE CASE

On May 19, 2011, the Beaufort County Grand Jury indicted Appellant Charles Green on counts of attempted murder, possession of a weapon during the commission of a violent crime, and possession of a firearm by a person convicted of a felony. R. 174. On November 18, 2013, Appellant proceeded to trial before The Honorable J. Ernest Kinard and a jury. Thomasine Trasi Campbell represented Petitioner and Hunter P. Swanson represented the State. R. 1. The jury found Appellant guilty of the lesser-included offense of assault and battery of a high and aggravated nature, and they found him guilty on the two weapons counts. R. 163, line 4—R. 164, line 3. The trial judge handed down concurrent sentences of two years of incarceration for the possession by a person convicted of a felony charge, five years for the possession of a weapon during the a violent crime charge, and ten years for the assault and battery charge. R. 173, lines 3-11.

ARGUMENT

THE TRIAL COURT REVERSIBLY ERRED BY FAILING TO CHARGE SELF-DEFENSE BECAUSE TESTIMONY WAS PRESENTED TO SUPPORT EACH ELEMENT OF SELF-DEFENSE.

FACTS

At trial the State alleged that on April 6, 2011, Appellant approached and fired a shotgun at Clifton Henry in front of a Food Lion grocery store. R. 2, line 16—R. 3, line 4. Clifton Henry testified that he was at Channon Preston's house that morning when Appellant and his girlfriend, Ashley, drove up and threw two twenty dollar bills at them. Henry and Preston then walked to Food Lion. Appellant and his girlfriend then drove to Food Lion, and Appellant walked to them and asked for the money back. Henry and Preston obliged, Appellant walked back to his car, spun around with the gun, and shot at him. He caught pellets in his legs and arm.

R. 59, line 12—R. 71, line 4.

The State called Investigator Adam Zsamar with the Beaufort County Sheriff's Office, who responded to a report of the shooting. R. 38, line 11—R. 43, line 9. He testified that as part of his investigation, he went to Channon Preston's home on Murray Drive near the Food Lion based on a report that an altercation involving gunshots occurred there before the Food Lion shooting. Investigator Zsamar learned that Preston and his mother, who also lived there, kept multiple guns in the house, and the mother was missing one on the day of the shooting. R. 43, line 11—R. 46, line 12.

The State also called Investigator Jeremiah Fraser, who also responded to the shooting. R. 82, line 16—R. 94, line 18. He stated on April 7, 2011, his investigation led him to Appellant's home to make an arrest. As he did so, his girlfriend, Ashley, "started

to holler that: He didn't start it, they shot at him first; was the first words out of her mouth [sic] once we took him into custody." R. 93, lines 16-20.

At the close of evidence, Appellant's counsel requested a jury charge on self-defense, stating that the testimony supported the charge. The judge denied the request, stating, "[T]here's no evidence, no direct testimony of it. And it's hearsay on hearsay. No bullet markings, he had no guns on him. . . . The guy—the victim testified he was not armed and did not shoot." R. 113, lines 6-24.

DISCUSSION

The trial court reversibly erred by failing to charge self-defense because testimony was presented to support each element of self-defense. The following four elements make up the complete defense of self-defense.

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Fuller, 297 S.C. 440, 442-43, 377 S.E.2d 328, 330 (1989)

Once a defendant raises the issue of self-defense, the State must disprove it beyond a reasonable doubt. *State v. Wiggins*, 330 S.C. 538, 544, 500 S.E.2d 489, 492-93 (1998). "If there is evidence of self-defense, the issue should be submitted to the jury

upon request,” and the trial court commits reversible error by failing to give a requested charge on an issue raised by the evidence. *State v. Hill*, 315 S.C. 260, 261-62, 433 S.E.2d 848, 849 (1993). Thus, testimony that a decedent fired a gunshot at a defendant who fired the fatal shot in return can support a self-defense charge. *State v. Taylor*, 261 S.C. 437, 200 S.E.2d 387 (1973). ““The general rule is that the failure to object to, or failure to move to strike, testimony renders such competent and accordingly entitled to be considered to the extent it is relevant.”” *State v. Burton*, 356 S.C. 259, 266, 589 S.E.2d 6, 9 (2003) (quoting *State v. Frank*, 262 S.C. 526, 205 S.E.2d 827 (1974)).

In this case, testimony was presented that Henry and Preston instigated a conflict with Appellant at the Food Lion, and Appellant was forced to fire at Henry to protect himself. Investigator Zsamar testified he went to Preston’s home on Murray Drive based on a report that an altercation involving gunshots occurred there before the shooting. He also testified Preston’s mother was missing a gun. Investigator Fraser then testified that Appellant’s girlfriend gave a statement that Henry and Preston shot at him first. Considering Henry’s unlikely story of how he came to possess Appellant’s money, taken together the evidence supports the finding that Henry and Preston repeatedly acted antagonistically toward Appellant on the day of the incident. Further, the two came to possess Appellant’s money and were ostensibly in possession of a gun. Thus, the evidence supports a finding that Appellant was without fault in encountering the armed, antagonistic men, and fearing imminent danger, he had no reasonable choice but to fire back.

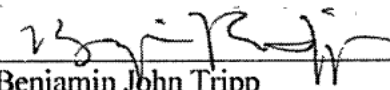
The trial judge concluded that the testimony of Appellant’s girlfriend that Henry and Preston fired at Appellant first could not support a charge for self-defense because it

was "hearsay on hearsay" and inconsistent with other evidence. The trial judge erred because the testimony was relevant and admitted into the record without objection and was therefore competent to support the charge. Apodictically, that the testimony was inconsistent with other evidence presented at trial was immaterial.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests reversal of his convictions for assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime and remand for a new trial.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of April, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 21st, 2015


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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

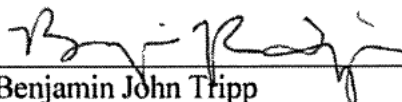
CHARLES GREEN, JR.,

APPELLANT

APPELLATE CASE NO. 2013-002526

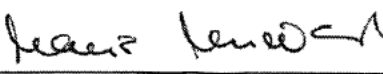
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mary W. Leddon, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of April, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of April, 2015.


(L.S.)
Notary Public for South Carolina

My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES GREEN, JR.,

APPELLANT

APPELLATE CASE NO. 2013-002526

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT	5
I. The trial court correctly denied Appellant's request to charge the jury on self-defense where evidence failed to support such a charge.	5
CONCLUSION.....	10

TABLE OF AUTHORITIES

Cases:

<u>Roney v. State</u> , 192 Ga. App. 760, 761 386 S.E.2d 412, 414 (1989).....	8
<u>Santiago v. State</u> , 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006).....	5
<u>State v. Dickey</u> , 394 S.C. 491, 716 S.E.2d 97, 101 (2011).....	6
<u>State v. Frazier</u> , 401 S.C. 224, 233, 736 S.E.2 d 301, 306 (Ct. App. 2013)	5
<u>State v. Goodson</u> , 312 S.C. 278, 440 S.E.2d 370 (1994).....	5
<u>State v. Knoten</u> , 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)	5
<u>State v. Light</u> , 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008).....	5
<u>State v. Mattison</u> , 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)	5
<u>State v. Pittman</u> , 373 S.C. 527, 647 S.E.2d 144 (2007).....	5
<u>State v. Rayfield</u> , 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006).....	5
<u>State v. Slater</u> , 373 S.C. 66, 644 S.E.2d 50 (2007).....	5
<u>State v. Wigington</u> , 375 S.C. 25, 649 S.E.2d 185 (Ct. App. 2007).....	6
<u>State v. Wiggins</u> , 330 S.C. 538, 500 S.E.2d 489, 493 (1998).....	6

STATEMENT OF ISSUES ON APPEAL

The trial court correctly denied Appellant's request to charge the jury on self-defense where evidence failed to support such a charge.

STATEMENT OF THE CASE

Charles Green ("Appellant") was indicted for attempted murder, possession of a weapon during a violent crime, and unlawful possession of a weapon. (R. 174-79) He proceeded to a jury trial before the Honorable J. Ernest Kinard, Jr., on November 18, 2013. Appellant was convicted of the lesser offense of assault and battery of a high and aggravated nature ("ABHAN") and sentenced to fifteen years. (R. p. 175) He was also convicted of unlawful possession of a weapon and possession of a weapon during a violent crime, receiving sentences of two and five years respectively. (R. p. 175)

STATEMENT OF FACTS

On April 6, 2011, Clifton Henry ("Henry") suffered shotgun pellet wounds to his left hip, thigh, and arm. (R. pp. 15-18) Luckily, the wounds were superficial, not appearing to impact bones or vital organs. (R. pp. 15-18) The shooting occurred at "a small shopping complex," consisting of a Food Lion, a Chinese restaurant, and other stores. (R. p. 27) Shotgun wadding was recovered at the scene. (R. pp. 31-33)

In April 2011, Henry lived on Murray Drive in the Burton area of Beaufort County. On April 6, 2011, Henry went to his friend Channon Preston's ("Preston") house, also on Murray Drive. (R. p. 60) As Henry and Preston sat outside, Appellant, also a resident of Murray Drive, arrived with his girlfriend, Ashley Thomas ("Thomas") in a gray Grand Marquis. (R. pp. 60-61; pp. 85-86) The couple went inside the house then Appellant came back out. According to Preston:

...[Appellant] was telling me and Channon he had just spent \$700. So Channon said, what did you spend it on? And he never said. Channon said, well, you better give us some of that money. [Appellant] throw [sic] two \$20 bills on the table and said, you two n*****s take that.

(R. p. 60) Henry and Preston took the money and went to Food Lion. (R. p. 60) At Food Lion, Appellant encountered Appellant and Thomas again:

And [Appellant] came up to us, he was – tears was coming out of his eye. [Appellant] say, I just been playing, man, let me get my money back. So we both [Preston and Henry] reach in our pocket and hand him \$20 back. And [Appellant] walk off. And when [Appellant] walk off, he went to the car, sat in the car, and spin around with the gun and shot the gun. The pellets catch me in my quarters and my arm. And [Appellant] drove off, say, now y'all so-and-so laugh at that.

(R. pp. 62-64) Henry reported Appellant used a double-barrel sawed-off shotgun retrieved from the passenger side floorboard. (R. p. 65) Henry denied being armed at the

Food Lion or at Murray Drive. (R. p. 65) Henry also denied any altercation between himself and Appellant that day prior to the shooting. (R. p. 66) Henry identified Appellant as his assailant from a photo lineup and in court. (R. p. 68; pp. 86-88)

Surveillance footage from the Chinese restaurant showed:

...[Appellant] get out of the passenger's side of the vehicle as [Victim and Preston] had described, walk over to where they were at, walk back – and what you are talking about is just a matter of a few feet. It's not a huge distance. It's very short distance. Go back to the vehicle, he turns around again, and then gets back in the vehicle and the vehicle flees... .

(R. pp. 91-92)

When officers took Appellant into custody, Thomas shouted, "He didn't start it, they shot at him first." (R. p. 93) Appellant was interviewed but maintained he knew nothing of the incident. (R. p. 94) Appellant did not testify at trial.

ARGUMENT

The trial court correctly denied Appellant's request to charge the jury on self-defense where such a charge is not supported by the evidence.

A trial court is required to charge the current and correct law of South Carolina. See State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)); Santiago v. State, 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Mattison, 388 S.C. at 479, 697 S.E.2d at 58.

"A self-defense charge is not required unless it is supported by the evidence." State v. Light, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008) (citing State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994)). "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." Light, 378 S.C. at 650, 664 S.E.2d at 469 (citing State v. Slater, 373 S.C. 66, 644 S.E.2d 50 (2007)); State v. Frazier, 401 S.C. 224, 233, 736 S.E.2d 301, 306 (Ct. App. 2013). A defendant must meet four prongs to justify using deadly force in self-defense:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would

have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and

(4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 716 S.E.2d 97, 101 (2011) (citing State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489, 493 [1998]). “[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt.” Id.

The evidence in this case simply does not support a jury instruction on self-defense. Appellant fails to meet the first element of self-defense. By all accounts, Henry and Preston were going into the Food Lion grocery store when Appellant drove up alongside them with a shotgun in the passenger floorboard. It is uncontested that Appellant exited the car and approached Henry and Preston, demanding money back. It is uncontested that Appellant returned to his car, turned, retrieved a shotgun from the front passenger floorboard, exited the vehicle, and opened fire. See State v. Wigington, 375 S.C. 25, 649 S.E.2d 185 (Ct. App. 2007) (Where defendant injected himself into verbal argument, removed himself from the argument, then returned with a gun, he was not without fault in bringing on the difficulty). Henry testified that he was unarmed and that there was no altercation; he simply returned Appellant’s money as requested. There is no evidence of any weapon other than a shotgun being present at the Food Lion. Because Appellant approached the unarmed Henry, Appellant was not without fault in bringing on the difficulty.

As for the second element, belief he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger, again there

is no evidence to support such a charge. The only evidence presented was that Appellant armed himself. The testimony established that Henry was actually attempting to hide behind the pillar when Appellant pulled the trigger. That Henry had time to assume a defensive position at such close range would in itself seem to negate Appellant's claim that Henry posed a threat. Henry testified that he was unarmed (R. p. 65), he had no prior conflicts with Appellant (R. p. 66), and he never threatened Appellant (R. p. 71). Similarly, absent evidence to support a belief of imminent danger, no evidence exists to support the third element of self-defense. Appellant's comment, "now y'all so-and-so laugh at that," as he drove away indicates that he was not in fear of his own life but rather enjoyed instilling fear in Henry.

As for the final element, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance, again no evidence exists. Appellant had time to return to his car, turn his back, and return to Henry before firing. He safely reached his vehicle and had time to safely retrieve a shotgun. Therefore, it stands to reason that he could have avoided any supposed danger by driving away. Further, Henry had time to hide.

Appellant attempts to construct a self-defense claim from hearsay evidence that his significant other, Thomas, exclaimed as he was arrested, "He didn't start it, they shot at him first." Even if accepted as evidence, this exclamation does not even identify who "they" are or what incident she is referring to.¹ Even if we assume she was referring to

¹ In denying Appellant's request for a charge on self-defense, Judge Kinard stated:

... there's no evidence, no direct testimony of it. And it's hearsay on hearsay. No bullet markings, he had no guns on him. They took him straight there. Forget it.

(R. p. 112) While it is the minority view, many states, including Georgia, find that, "[h]earsay evidence is without probative value and will not establish fact in issue even in the absence of a timely objection."

the incident at Food Lion, the argument still fails. It was Appellant who armed himself and sought Henry out, negating the possibility that Appellant was without fault in bringing on the confrontation. Moreover, as Appellant had time to safely return to his car and Henry had time to cringe behind a pillar, it would seem that even Ashley's hearsay statement would fail to meet the fourth element of self-defense.

Appellant cites to "facts" not in the record. There is no evidence that Henry "instigated a conflict at Food Lion." In fact, the only evidence in the record indicates that Appellant initiated the encounter when he pulled up, exited his car, and approached Henry and Preston. Further, the fact that Preston's mother had her gun stolen was in no way linked to this incident. Preston's mother did not know who had stolen the gun, and no time frame was given. (R. pp. 44-46) Appellant's girlfriend never "gave a statement" or testified. At best, there is hearsay evidence that she exclaimed as her significant other was arrested, "He didn't start it, they shot at him first." This exclamation does not even identify who "they" are or when this occurred. Nothing in Henry's story can support a self-defense charge. In fact, Henry's testimony leads to the opposite conclusion. According to Henry, he was unarmed, complied with Appellant's request to return the money, and had no altercations with Appellant prior to Appellant opening fire on him. Henry was hiding behind a pillar when Appellant opened fire, and this portion of Henry's story is corroborated by the minimal wounds he sustained. No evidence in the record supports Appellant's contention that Henry and Preston were "armed, antagonistic men" or that they were "ostensibly in possession of a gun."

Roney v. State, 192 Ga. App. 760, 761 386 S.E.2d 412, 414 (1989). South Carolina has not expressly ruled on this issue. The State submits it is not necessary to reach this question because even if Thomas' testimony was accepted, the evidence still would not support a self-defense charge.

In the absence of evidence, the trial court properly denied Appellant's request to charge self-defense.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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April 8, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2013-002526

THE STATE,

Respondent,

v.

CHARLES GREEN, JR.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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April 8, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable J. Ernest Kinard, Circuit Court Judge

Appellate Case No. 2013-002526

THE STATE,

Respondent,

v.

CHARLES GREEN, JR.,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
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